

CANDACE HARPER

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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CANDACE HARPER, Individually and on  
behalf of all other persons similarly  
situated,

Plaintiff,

Civil Action No.

-against-

09-CV-2254

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant.

-----x

March 18, 2010

12:14 p.m.

Videotaped Deposition of CANDACE HARPER,  
taken by Defendant, pursuant to Notice, at the  
offices of Dorsey & Whitney, LLP, 250 Park  
Avenue, New York, New York, before William  
Visconti, a Shorthand Reporter and Notary Public  
within and for the State of New York.

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A P P E A R A N C E S:

KLAFTER OLSEN & LESSER LLP

Attorneys for Plaintiff

Two International Drive, Suite 350

Rye Brook, New York 10573

BY: FRAN L. RUDICH, ESQ.

LANA KOROLEVA, ESQ.

SHAW ROSENTHAL LLP

Attorneys for Defendant

20 S. Charles Street, 11th Floor

Baltimore, MD 21201

BY: ERIC HEMMENDINGER, ESQ.

-AND-

DORSEY & WHITNEY LLP

250 Park Avenue

New York, New York 10177

BY: LAURA M. LESTRADE, ESQ.

ALSO PRESENT:

JOHN HAGIN, Videographer

WILLIAM C.E. ROBINSON, Geico

JOHN PHAM, Geico

MARLENE HARRIS-GRANT, Geico

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IT IS HEREBY STIPULATED AND AGREED  
by and between the attorneys for the  
respective parties herein that filing and  
sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form  
of the question, shall be reserved to the  
time of the trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be signed  
and sworn to before any officer authorized  
to administer an oath with the same force  
and effect as if signed and sworn to before  
the Court.

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2 THE VIDEOGRAPHER: This is the video  
3 operator speaking, John Hagin, of Merrill. Today  
4 is Thursday, the 18th of March, 2010. The time  
5 on the video monitor is 12:14 p.m. We are at the  
6 offices of Dorsey & Whitney, 250 Park Avenue, New  
7 York, New York to take the videotape deposition  
8 of Miss Candace Harper. In the matter of Candace  
9 Harper individually and on behalf of all other  
10 persons similarly situated versus the Government  
11 Employees Insurance Company, Geico. In the  
12 United States District Court, Eastern District  
13 New York. Will counsel introduce themselves for  
14 the record.

15 MS. RUDICH: Fran Rudich from  
16 Klafter Olsen & Lesser for the Plaintiff.

17 MS. KOROLEVA: Lana Koroleva from  
18 Klafter Olsen & Lesser also for the Plaintiff.

19 MR. HEMMENDINGER: Eric Hemmendinger  
20 for Geico.

21 MS. LESTRADE: Laura Lestrade for  
22 Geico.

23 THE VIDEOGRAPHER: The court  
24 reporter today is Mr. Bill Visconti from Merrill  
25 and you may swear the witness.

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C A N D A C E H A R P E R ,

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having been first duly sworn by the Notary Public  
(William Visconti), was examined and testified as  
follows:

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EXAMINATION CONDUCTED BY MR. HEMMENDINGER:

7

Q. Miss Harper, my that name is Eric

8

Hemmendinger, I'm counsel for Geico in the

9

lawsuit you filed. I'm going to be asking you

10

some questions about your job at Geico. Has your

11

lawyer had an opportunity to explain the

12

procedure for this deposition to you?

13

A. Yes.

14

Q. And do you understand that the

15

testimony that you give in a deposition can be

16

used as evidence in your lawsuit?

17

A. Yes.

18

Q. I'm going to ask you a couple of

19

questions about your job history at Geico. If

20

you count back six years from the date the

21

complaint was filed in this case you get to the

22

date of May 28, 2003.

23

A. Okay.

24

Q. Am I correct that at that time you

25

your job was PIP Specialist 1?

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2 A. I believe so.

3 Q. And was that job exempt or nonexempt  
4 from overtime?

5 A. I'm not sure, but I think it was -- I  
6 think I was salary.

7 Q. You were salaried with overtime in  
8 that job, am I correct?

9 A. Salaried with -- that is --

10 Q. You don't recall that?

11 A. I don't recall.

12 Q. Am I correct in September -- from  
13 September 20th, 2003 to November 13th, 2004 you  
14 were a PIP Specialist 2?

15 A. I guess so. I'm not sure about the  
16 dates, but I believe so.

17 Q. Am I correct that this lawsuit does  
18 not cover your employment as a PIP Specialist 1  
19 and 2? Your lawsuit concerns your employment as  
20 a TCR 2?

21 A. I'm not sure. I'm not sure about  
22 that.

23 Q. Do you know or do you not know  
24 whether you were eligible to receive overtime or  
25 not eligible to receive overtime when you were

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2 working as a PIP?

3 A. I believe when I was a PIP Specialist 2  
4 I was exempt from overtime, I guess. That's what  
5 I'm thinking, yes.

6 Q. Do you have a firm recollection of  
7 that?

8 A. No. But I believe so.

9 Q. Am I correct from November 13th, 2004  
10 to April 23rd, 2009 you were employed in the job  
11 of Telephone Claim Representative 2?

12 A. Yes.

13 Q. And that is also referred to as  
14 TCR 2, it is also referred to as TA 2?

15 A. Yes.

16 Q. And in that job you were classified  
17 as exempt from overtime, am I correct about that?

18 A. Yes.

19 Q. And you are alleging that that was a  
20 violation of the law by Geico, am I right about  
21 that?

22 A. Yes.

23 Q. This will work better if you wait  
24 until I completely finish so we don't talk over  
25 each other.

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2 Do you recall who your  
3 supervisors were when you were employed as a  
4 TCR 2.

5 MS. RUDICH: Objection, you can  
6 answer. You can answer.

7 A. Carol Vilar and Marlene Harris-Grant.  
8 Those were my two main supervisors.

9 Q. Do you recall that we served some  
10 written discovery requests on you through your  
11 attorneys including a document called Request For  
12 Admissions?

13 A. I believe so. I'm not sure. I'm not  
14 sure.

15 Q. Would you agree with me that it is  
16 undisputed that you were paid by salary the  
17 entire time that you were employed as a Telephone  
18 Claim Representative 2?

19 A. I wouldn't dispute that, no.

20 MR. HEMMENDINGER: I guess we should  
21 mark this as an exhibit, this will as Exhibit 1.

22 (Harper Exhibit 1 for  
23 identification, Defendant's Answers To Plaintiffs  
24 First Set Of Interrogatories.)

25 Q. Miss Harper, I handed you what is



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2 mark as Harper Deposition Exhibit 1 and this  
3 document is entitled Defendant's Answers To  
4 Plaintiffs First Set Of Interrogatories. This is  
5 a set of documents that we, that Geico provided  
6 to your attorneys in this lawsuit. Have you seen  
7 this before?

8 A. Yes, I have.

9 Q. I would like you to look at page 16,  
10 please. At the bottom of page 16 there is a  
11 salary history for you, it starts in May of '03  
12 at \$38,000, 38,055 and proceeds up to your  
13 employment with your salary increasing  
14 periodically, do you see that?

15 A. Yes, I do.

16 Q. Do you have any reason to disagree  
17 with those figures as being what your salary was?

18 A. No.

19 Q. Do you understand as a salaried  
20 exempt employee you received the same amount each  
21 week regardless of the amount of hours you  
22 worked?

23 A. Can you repeat the question again  
24 please?

25 Q. When you were working as a TCR 2, did

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2 you understand that your salary was the same  
3 every week regardless of how many hours you  
4 worked?

5 A. Yes.

6 Q. Miss Harper, what was your schedule --  
7 let me back up and ask you a question before  
8 that.

9 As a TCR 2 during the period that you  
10 were employed, did your schedule and hours vary  
11 over time or did you always have the same hours  
12 and schedule?

13 MS. RUDICH: Objection.

14 Q. Let me clarify that. I'm not -- I  
15 know it varied from week to week. But was your  
16 basic -- you had a basic schedule that it was  
17 Monday through Friday from some time to some time  
18 I assume; is that correct?

19 A. Right, that is correct.

20 Q. Did that change over time or was it  
21 always the same?

22 A. I'm not understanding the question.

23 Q. Let's start when you started as a  
24 TCR 2, what was your schedule?

25 A. When I started as a TCR 2 my schedule

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was, I believe, I'm not quite certain, but I believe it was probably 7:30 to 4:00 or it could have been 4:30.

Q. Monday through Friday?

A. Monday through Friday.

Q. Did that ever change?

A. There was -- it is called a -- where you would work maybe an hour extra a day or half an hour so that you could have Friday off, but you would make it up during those two weeks.

Q. In a typical week can you describe when you came to work and when you left work?

A. A typical week?

Q. Yes.

MS. RUDICH: Objection, you can answer.

A. A typical week would -- I would get in probably around 7, 7:30 and would leave 5:30. I would come in on Saturdays, Sundays sometimes.

Q. Is that every Saturday and Sunday or some Saturdays and Sundays?

A. I would say a lot of Saturdays and Sundays.

Q. Do you have any way of measuring how

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2 many of them?

3 A. No.

4 Q. When you came in on a Saturday, how  
5 many hours would you work?

6 MS. RUDICH: Objection. Are you  
7 talking about generally?

8 MR. HEMMENDINGER: Yes, generally.

9 A. Generally, five.

10 Q. On a Sunday?

11 A. Same.

12 Q. Would you work a Saturday and Sunday  
13 the same weekend or would it be Saturday or  
14 Sunday?

15 A. The same weekend most of the time.

16 Q. Let me just ask you again. Would you  
17 work -- would that be every other Saturday and  
18 Sunday that you would come in to the office or  
19 every third Saturday and Sunday?

20 A. No. It could be a month straight  
21 Saturday and Sunday.

22 Q. And then could it be a month straight  
23 of no Saturdays and Sundays?

24 A. No.

25 Q. Did the workload vary from time to

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2 time based on the case load?

3 A. The workload did vary from time to  
4 time.

5 Q. Did your hours vary with the  
6 workload?

7 A. I'm not sure how to answer that  
8 question. Ask me one more time.

9 Q. Did your hours -- did the amount of  
10 hours that you worked in a week change from time  
11 to time based on how heavy the case load was?

12 A. Yes, it did.

13 Q. In your view what would the high  
14 number of hours in a week be?

15 A. 15.

16 Q. 50?

17 A. 15. 1-5.

18 Q. That is the number of overtime hours?

19 A. Yes.

20 Q. So 65 total?

21 A. Yes.

22 Q. Sorry, 55 total hours?

23 A. I think I worked 37 1/2 hours.

24 Q. So --

25 A. 77.5 hours a week, every other week,

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2 every two weeks.

3 Q. So we are talking about the same  
4 thing, the base schedule is 37 1/2 hours a week,  
5 correct?

6 A. 15 above that.

7 Q. So it would be 15 above that would be  
8 the high, what would the low be?

9 A. I don't recall exactly, but I would  
10 say probably between 7 and 10.

11 Q. Do you have a sense of what the  
12 average was?

13 A. No.

14 Q. Let's shift gears here and talk a bit  
15 about the training. Do you recall the training  
16 that you had at Geico?

17 A. Yes.

18 Q. When you first were hired by Geico,  
19 what training did you attend?

20 A. When I was first hired when, for what  
21 position?

22 Q. Your first position were you hired  
23 into I believe was sort of a trainee slot where  
24 you could have gone into either personal injury  
25 protection or adjusting; am I correct?

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2 A. Yes.

3 Q. Or liability claims?

4 A. Yes.

5 Q. Were you attending a training class  
6 at that time?

7 A. Yes, I was.

8 Q. Where did that training class take  
9 place?

10 A. At 750 Woodbury.

11 Q. How long did that last?

12 A. It lasted for eight weeks but I was  
13 there for six weeks.

14 Q. What happened to the other two weeks?

15 A. I was on vacation.

16 Q. What was the nature of that training?

17 A. That was CSR training.

18 Q. For the record, can you tell us what  
19 the CSR is?

20 A. Customer service.

21 Q. So were you training for an entry  
22 level claims service rep job?

23 A. I believe it was something new that  
24 Geico was doing. They were hiring people from  
25 outside and they had set up training for the CSR

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2 training and you would have to do that first.

3 Q. Do you recall what that covered?

4 A. Policy contracts, we talked about  
5 liability scenarios.

6 Q. After that training, what did you do?

7 MS. RUDICH: Objection. Do you mean  
8 --?

9 MR. HEMMENDINGER: I don't know the  
10 answer, so I'm asking.

11 MS. RUDICH: The question you mean  
12 what did you do relating to what job?

13 Q. What job did you hold? Did you go to  
14 another trainee position or did you start working --

15 A. In 2001 I started in property damage.

16 Q. What were you doing in property  
17 damage?

18 A. I was a liability claims examiner.

19 Q. So you were a liability claims  
20 examiner for what types of claims?

21 A. Property damage claims.

22 Q. How long did you stay in that?

23 A. From September 10th, 2001 until I  
24 believe October of 2002, or November of 2002.

25 Q. What was the next position that you



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2 went to within Geico?

3 A. Then I transferred to the personal  
4 injury protection department.

5 Q. Did you receive any additional  
6 training when you went into that?

7 A. Yes, I did.

8 Q. What was that training about?

9 A. That was no-fault training.

10 Q. How long did that last?

11 A. I believe that lasted, I'm not sure,  
12 but I think it lasted maybe six to eight weeks.

13 Q. After that training, did you start  
14 working as a no-fault examiner?

15 A. Yes.

16 Q. How long did you work as a no-fault  
17 examiner?

18 A. I'm not sure, but I think it was two  
19 years, two, three years maybe.

20 Q. After doing that, you became a TA 2;  
21 correct?

22 A. Yes, I did.

23 Q. So, focusing back on the training,  
24 there was the initial training that you received  
25 when you were hired and then there was the

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2 personal injury protection claim training that  
3 you received when you went into that job. Did  
4 you go through any other training courses with  
5 Geico?

6 A. You mean as far as any positions are  
7 concerned?

8 Q. Yes.

9 A. I had some training doing TA 1 -- I  
10 mean TA 2.

11 Q. How long did that training last?

12 A. I don't recall.

13 Q. Was that conducted at Woodbury?

14 A. Yes.

15 Q. Did you go to any training anywhere  
16 apart from Woodbury?

17 A. No.

18 Q. When you were in training, was this  
19 classroom training?

20 A. When you say classroom, what do you  
21 mean? Are we actually in a classroom?

22 Q. Not in a work site, but in a training  
23 place where there were instructions going on.

24 A. Basically the training that I  
25 received took place at the desk. There were a

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2 group of desks that were on the floor. It wasn't  
3 in a room, and basically it was kind of like we  
4 were self-teaching.

5 Q. Did you receive any written materials  
6 as part of those training programs?

7 A. Yes, lots of written materials.

8 Q. Did you keep any of them when you  
9 left Geico?

10 A. No.

11 Q. So do you still have any of the  
12 training material that you received from Geico?

13 MS. RUDICH: Objection, asked and  
14 answered.

15 A. No.

16 Q. Let me ask you about the period that  
17 you were employed as a TCR 2. Were you licensed  
18 anywhere?

19 A. No.

20 Q. Were you working on being licensed  
21 anywhere?

22 A. No.

23 Q. Does New York State require an  
24 insurance adjuster to be licensed?

25 A. I don't think so. I wasn't.

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2 Q. Let me ask you this, I think I saw  
3 some reference in your personnel file to your  
4 discussing getting licensed in Connecticut, does  
5 that ring any bells with you?

6 A. No.

7 Q. As a TCR 2, how many claims on the  
8 average would you intake in a week say?

9 MS. RUDICH: Objection. You can  
10 answer.

11 A. Wow, I really couldn't tell you.  
12 Sometimes I could get three a day.

13 Q. Do you have any ability to tell us if  
14 on a weekly basis or monthly basis or yearly  
15 basis how many claims you handled?

16 A. Well, looking at claims it was really  
17 your feature count is what I basically -- how I  
18 basically looked at my production or my intake.  
19 How many features. Are you talking if you're  
20 talking about features, there was a time when I  
21 had 320 some odd features.

22 Q. Open or in a year?

23 A. Yes, open.

24 Q. That would be your -- is that what we  
25 call your pending?

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2 A. Yes.

3 Q. Do you have a sense of how many  
4 features per claim there would typically be?

5 A. No.

6 Q. For the benefit of somebody that may  
7 look at this deposition that doesn't know  
8 insurance, what is a feature?

9 A. Okay, a feature is -- it is  
10 something, how many am I going to say -- a  
11 feature is a dollar amount.

12 Q. Let me see if I could help you here.  
13 This may be a little -- I'm not that great on it  
14 myself, but somebody is in an automobile accident  
15 and the car is damaged and they also have a  
16 personal injury. Okay, would there be a feature  
17 for the damage to the automobile?

18 A. Yes, absolutely.

19 Q. And the feature would be what type of  
20 claim, what part the policy the claim is being  
21 made under?

22 A. Yes.

23 Q. So that could be the collision damage  
24 portion of the --

25 A. Exactly.

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2 Q. -- of the policy?

3 A. Yes.

4 Q. And there would be another feature  
5 for bodily injury?

6 A. Yes, absolutely.

7 Q. What other types of features are  
8 there?

9 A. There is PIP. There is collision,  
10 there is rental, there is LOU.

11 Q. Is that a loss of use?

12 A. Yes. Then there is COP.

13 Q. What does that mean?

14 A. Cash payout -- I don't know the exact  
15 meaning. I think the total loss features. But  
16 I'm not familiar with all the features, but yes.

17 MR. HEMMENDINGER: Mark this as  
18 Exhibit 2.

19 (Harper Exhibit 2 for  
20 identification, Group of documents taken out of  
21 Miss Harper's personnel file.)

22 MS. RUDICH: Are you marking it or  
23 using the Bates stamp number?

24 MR. HEMMENDINGER: This one I will  
25 mark and refer to the Bates stamp numbers.

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2 MS. RUDICH: That's fine.

3 MR. HEMMENDINGER: But your point is  
4 well taken.

5 Q. Miss Harper, in Exhibit 2 what I did  
6 was staple together a group of documents that we  
7 took out of your personnel file and they are kind  
8 of grouped. The first one is Geico 6162 and the  
9 title of it is Memorandum Subject Performance  
10 Review, 2007 Candace Harper and then it has  
11 writing on it which is by your supervisor; am I  
12 correct?

13 A. Yes, that looks like her signature.

14 Q. On the second page, page 62, is that  
15 your signature?

16 A. I believe it is, yes.

17 Q. Then we go to the next document, 63  
18 and that is -- is that part of the same  
19 performance appraisal package? The reason that I  
20 ask, the performance appraisal is dated February 8th,  
21 2008 and this document is dated February 4th,  
22 2008. 63 is dated February 4th, do you see that?

23 A. I'm looking at my signature and date  
24 and it says 2007.

25 Q. Right. If we look at the front that

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2 appears to be a mistake, doesn't it?

3 MS. RUDICH: I'm just pointing out  
4 the date.

5 MR. HEMMENDINGER: That's fine.

6 MS. RUDICH: If you look at the date  
7 on that.

8 A. Okay, what is the question?

9 Q. So Geico 63, the third page is an  
10 attachment to your performance appraisal,  
11 correct?

12 A. Yes.

13 Q. And it's an attachment to 61 and 62?

14 A. Yes.

15 Q. And the text in this that is typed  
16 in, this was written by you, am I correct?

17 A. I believe so, yes.

18 Q. Under skill development  
19 accomplishments it lists some things that you did  
20 and I want to ask you about what these consisted  
21 of. One is -- the first one is Serious Injury  
22 Seminar NYS. New York State is that what that  
23 means?

24 A. Yes.

25 Q. What was that seminar?



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2 A. I don't recall.

3 Q. Do you have any recollection of  
4 attending a seminar on serious injuries?

5 A. I probably did, but I don't recall  
6 what it was about.

7 Q. What do serious injuries have to do  
8 with your job as a TCR 2?

9 A. I would get claims where people were  
10 injured in accidents and they were injured  
11 seriously, some not seriously.

12 Q. So is it important for you to know  
13 about the medical aspects of the injuries?

14 A. Yes.

15 Q. The next thing is threshold. Was  
16 this a class or seminar that you attended?

17 A. Yes, I believe so.

18 Q. Do you recall the class or the  
19 seminar?

20 A. Yes, I do.

21 Q. What was it?

22 A. I can't tell you exactly what it was  
23 about, but I know that an attorney's firm came in  
24 and spoke on what the threshold was, what kind of  
25 things -- what kind of things I guess we would

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2 settle on. We would be able to settle on.

3 Q. Can you explain what the threshold  
4 was or is?

5 A. How I understood it is that I guess  
6 there was a series of events or things or serious  
7 injury that would have to occur in order for  
8 someone to have a valid bodily injury claim.

9 Q. Is the threshold a legal concept?

10 A. I believe so.

11 Q. Was it one that you had to employ in  
12 your work as a TCR 2?

13 MS. RUDICH: Objection. Vague and  
14 ambiguous.

15 A. I would have to know -- yes, about  
16 the threshold.

17 Q. The threshold is a legal test, it  
18 comes out of a statute?

19 A. I'm not sure about that.

20 Q. What is the -- do you know what the  
21 point of the threshold test is? What happens if  
22 you pass the threshold?

23 MS. RUDICH: Objection. Vague and  
24 ambiguous.

25 A. Say that one more time.

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2 Q. Well, obviously I didn't say it in a  
3 way that is ringing any bells with you, so let me  
4 try it from a different angle.

5 The threshold is a legal testing, am  
6 I correct, that enables -- that determines  
7 whether somebody can bring a personal injury  
8 lawsuit in New York?

9 A. Okay, I would agree with that.

10 Q. Would you agree with that?

11 A. Yes.

12 Q. If they do not meet the threshold,  
13 their remedies are limited to the PIP remedies,  
14 am I correct? Their payment, they would only be  
15 paid what PIP protection provides?

16 A. I think it is two different things.

17 Q. Okay, if they -- let me try it a  
18 different way.

19 If they do not pass the threshold  
20 could they file a lawsuit against the adverse  
21 driver?

22 A. Could they -- say it again.

23 Q. Say I'm in an accident and Fran and I  
24 are in an accident, and I'm injured.

25 A. Right.

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2 Q. In order to file a claim against  
3 Fran, do my injuries have to pass the threshold?

4 A. No, you -- no, anyone can file a  
5 claim.

6 Q. They could file a claim against  
7 Geico?

8 A. Yes.

9 Q. Can they file a lawsuit in court?

10 A. I wouldn't know about that.

11 Q. Did the threshold make a difference  
12 in how you handled the case, a claim?

13 A. Sometimes it did.

14 Q. Can you describe what difference it  
15 made?

16 A. Well some times you did things for  
17 what they were to be a business decision.

18 Q. What does that mean?

19 A. Depending on what type of claim it  
20 is. If --

21 Q. Can you give me an example?

22 A. Pedestrian knock down, a child, you  
23 might after a discussion with your supervisor,  
24 you might -- it might be decided instead of them  
25 filing a lawsuit, that you would give them a

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2 couple of hundred dollars.

3 Q. Let's move down to the next item on  
4 this list, Safeguarding Customer Privacy. Do you  
5 recall receiving training on that?

6 A. I don't remember, but I probably did,  
7 yes. I don't remember exactly what the training  
8 was, but I believe I did have -- I think it was  
9 on the computer that we did it. I'm not  
10 remembering.

11 Q. The next item is Auto Repair Express  
12 Training, what was that?

13 A. That was for the what they call the  
14 ARXs. Basically just told you how you should, I  
15 guess, basically explain to the customer the  
16 benefits of using their -- Geico's auto repair  
17 services.

18 Q. As a TA 2 or TCR 2, what involvement  
19 did you have in the auto damage portion of the  
20 claim?

21 A. When you say involvement, well some  
22 of the claims would come to me with property  
23 damage still opened on them and I would  
24 basically, either if it was a Claimant and we  
25 were at fault, I would just refer them to an

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2 adjuster.

3 Q. Did you ever to assign a pay code to  
4 the claim?

5 A. Yes.

6 Q. What were the possible pay codes?

7 A. There was pay code 1, which would be  
8 if I just wanted pictures, I believe. Pay code 2  
9 I believe was a good pay code.

10 Q. That meant it was okay to pay?

11 A. Okay to pay. And then there was pay  
12 code 4 which is a bad pay code, I believe.

13 Q. You would assigned a good or bad pay  
14 code to the claim?

15 A. Yes.

16 Q. Who would use that pay code?

17 A. The adjusters would use that pay code  
18 to pay.

19 Q. What you would be doing is telling  
20 them whether it is okay or not okay to pay the  
21 auto damage claim?

22 A. Yes.

23 Q. Let's go to the next item on this  
24 list, what does CAP mean?

25 A. I don't remember what CAP means.

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2 Q. Do you recall a training that was CAP  
3 awareness training?

4 A. That was also done on the computer, I  
5 believe.

6 Q. Do you recall the words Competitive  
7 Advantage Process?

8 A. Yes, okay. I kind of remember.

9 Q. What does that mean?

10 A. I wouldn't really be able to tell you  
11 that.

12 Q. Do you recall the training?

13 A. I remember it was done on the  
14 computer, yes.

15 Q. The next thing is Claims IQ Injury  
16 Knowledge Test. What kind of training was that?

17 A. I believe we had to take a test -- we --  
18 all the examiners who used Claims IQ in the  
19 liability department, we had to show proficiency  
20 of using the Claims IQ and there was a test, we  
21 had to go through each and every single screen.

22 Q. The next item is evaluating causation  
23 of injury and bodily injury claims. Do you  
24 recall the training program on that?

25 A. I don't recall that. I don't recall

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2 that.

3 Q. Can you tell me what evaluating  
4 causation of injury and bodily injury claims how  
5 that related to your work as a TA 2?

6 A. We would get medical reports from  
7 doctors or from attorneys would send me medical  
8 records and I would take them, put them in order,  
9 count the number of times, of the different  
10 treatments that they had. I would read over the  
11 treatment and the prognosis and that is basically  
12 how --

13 Q. You described to me reading a medical  
14 file. How did you use that information to  
15 evaluate causation of injury?

16 A. I don't know that I actually  
17 evaluated causation. A doctor would basically  
18 say whether or not it was causally related. I  
19 would read the reports. If someone was involved  
20 in an accident and they complained that they hit  
21 their head and now they have to have a CAT scan,  
22 would you say that it was related to the  
23 accident. I don't know if that is evaluating  
24 causation.

25 Q. Did you have to look at medicals and



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2 decide whether you thought they were validly part  
3 of the automobile claim or perhaps were  
4 fraudulent or a preexisting condition?

5 A. Say that one more time.

6 Q. If somebody comes in, you got the  
7 medical, a person has been in an accident and you  
8 got the medical, did you have to evaluate whether  
9 those medicals -- whether it seemed sensible that  
10 those medicals were caused by the accident in  
11 question?

12 A. No.

13 Q. Did you have to evaluate whether they  
14 were possibly fraudulent medicals?

15 A. No.

16 Q. Let's go on to the next two pages  
17 which is 68 and 69. Would you agree with me that  
18 this is an appraisal form for you for the period  
19 of -- well it is the year of 2005?

20 A. Yes.

21 Q. And I want you to look at the second  
22 page which is Geico 69 in Exhibit 2?

23 A. Okay.

24 Q. Is the typing in each of these  
25 sections your writing?

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2 MS. RUDICH: Objection. Do you mean  
3 did she type it?

4 MR. HEMMENDINGER: Did she author it.

5 MS. RUDICH: Okay.

6 A. Yes.

7 Q. So the I is Candace Harper?

8 A. Yes.

9 Q. Is that your signature at the bottom?

10 A. Yes, it is.

11 Q. Under skill development  
12 accomplishments, that is the third section, it  
13 says the second sentence says, "I have been able  
14 to learn and utilize ADR procedures and negotiate  
15 parameters." What is ADR?

16 A. Wow, I don't remember.

17 Q. Does it mean alternative dispute  
18 resolution?

19 A. I don't remember, but I know I wrote  
20 this, but I don't remember what ADR stands for.

21 Q. Do you know what negotiate parameters  
22 means?

23 A. I believe that has to do with CIQ.

24 Q. Can you put into noninsurance  
25 language what you meant in this sentence?

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2 A. To the best of my recollection I had  
3 to be talking about the parameters I guess from  
4 the CIQ screen, but I'm not sure. To be quite  
5 honest with you, I'm not sure what I meant by  
6 that sentence at that time. I'm not sure.

7 Q. Let's go to the next page the next  
8 item which is pages 70 and 71. And this is dated --  
9 this is still in Exhibit 2, it is dated February 15th,  
10 2006 and this is another evaluation. This is  
11 from Carol Vilar, am I correct?

12 A. Yes.

13 Q. On the second page which is 71 is  
14 that your signature at the bottom?

15 A. Yes.

16 Q. And did you write in, I agree with  
17 all of the above comments.

18 Let's go to the next page, 179, Geico  
19 179, 180 and 181. Am I correct that that was  
20 your evaluation given to you in 2009?

21 A. Yes.

22 Q. So the first page is from Marlene  
23 Harris-Grant and she typed that up or used a  
24 computer to prepare that?

25 A. Yes.

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2 Q. And the second page has your  
3 comments?

4 A. Yes.

5 Q. Am I correct?

6 A. Yes.

7 Q. And the third page is your  
8 self-appraisal for the same period, am I correct?

9 A. Yes.

10 Q. So, I want to ask you about the  
11 training courses that are listed on page 181 of  
12 Exhibit 2.

13 Do you recall, do you see where it  
14 says Bad Faith Seminar by Connors & Connors?

15 A. Yes.

16 Q. Do you recall that?

17 A. I remember the seminar, yes, I do.

18 Q. What did that concern?

19 A. Bad faith.

20 Q. What is bad faith?

21 A. I wouldn't be able to explain that.

22 Q. Did it have something to do with your  
23 obligations as a TCR 2 to the people that you  
24 were dealing with?

25 A. I mean I guess it has to do with how

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2 you handle a claim and you should be fair and,  
3 but, yes, I really couldn't tell you what the  
4 seminar was about.

5 Q. Can you give me an example of some  
6 work that you would have to do that would cause  
7 you to have to be fair to a member of the public?

8 A. What I would do in my job that would  
9 cause me to be fair?

10 Q. Yes. When did you have to think  
11 about being fair?

12 A. Any time I handled a claim I believe  
13 I handled it fairly.

14 Q. Who are you being fair to?

15 A. To Claimants, policyholders.

16 Q. What were you being fair about?

17 A. Proper claims handling.

18 Q. What kind of decisions would you have  
19 to make where you would have to be fair?

20 A. I don't know what you mean by  
21 decisions.

22 Q. What kind of things did you deal  
23 with, say Claimants on, where you would have to  
24 be fair to them?

25 A. I guess -- I don't know how to answer

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2 that question.

3 Q. All right. Then we have CAP  
4 Awareness Training 2. Did that sink in any more  
5 than the first time?

6 A. No. I believe that was another  
7 computer training that we had to do.

8 Q. And the next one is Good Negotiating  
9 Strategies And Practices. Do you recall  
10 attending that?

11 A. I don't remember that.

12 Q. I'm wondering --

13 A. I don't remember that. I don't  
14 remember.

15 Q. Then it says Liability Post Training  
16 Certification Quiz For Rental. Do you recall  
17 that?

18 A. I don't recall that.

19 Q. In your job what did you have to do  
20 with rental?

21 A. Like if they had collision and they  
22 had rental on their policy you would open the  
23 feature for rental.

24 Q. Okay, that would be the coverage  
25 would pay them to rent a car while the car was in

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2 the shop?

3 A. Right.

4 Q. The next item says Permissive Use  
5 Seminar, do you recall that?

6 A. Wow. Vaguely remember that.

7 Q. What is permissive use?

8 A. That is you lend your car to someone  
9 and you're actually giving them permission, that  
10 would be considered permissive use. If you -- if  
11 they just took your car -- or you say you left  
12 your keys in the car and your windows open and  
13 your car running and you run into 7-11, that is  
14 implied permissive use because you left your car  
15 open.

16 Q. How did you use that information in  
17 handling claims?

18 A. I really don't recall having  
19 permissive use issues in any of the claims that I  
20 handled, that I can recall.

21 Q. How could permissive use come up in a  
22 claim?

23 A. If someone said someone stole their  
24 car and they left the keys in the car and went to  
25 7-11 and they took the car and got into an

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2 accident, that could play a role.

3 Q. What would the TCR 2 be required to  
4 do about that?

5 A. If there is a question on -- it is  
6 like a policy question, then you would speak with  
7 your supervisor who would advise you to go see  
8 the RLA.

9 Q. What is the RLA?

10 A. I believe it is the Regional Law  
11 Advisor. I'm not sure, I believe that is what it  
12 is.

13 Q. Did you ever do that?

14 A. Yes, I have.

15 Q. When you did that, would you -- what  
16 would you do, present the facts to the  
17 investigator?

18 A. He would ask questions about the  
19 claim. I guess you could say that I presented  
20 the facts to him as he asked the questions and  
21 then he would make a decision on how we should  
22 handle the claim.

23 Q. Let me go down to where it says Skill  
24 Development Accomplishments. You wrote "I was  
25 able to get quite a bit out of class that I took



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2 on good negotiation strategies and practices. I  
3 believe it has made me an attuned, personable and  
4 yet firm negotiator. I use what I learned in  
5 that seminar on a daily basis when dealing with  
6 the attorneys." Do you see that?

7 A. Yes.

8 Q. Those were your words?

9 A. Yes, yes.

10 Q. Does that refresh your recollection  
11 at all about the good negotiation strategies and  
12 practice course that you took?

13 A. It doesn't refresh it, no.

14 Q. How would you use negotiation  
15 strategies in your work as a TCR 2?

16 A. Once I have money on my file, I would  
17 call the attorneys and basically negotiate a --  
18 try to negotiate, attempt to negotiate a  
19 settlement.

20 Q. That I gather required some artistry  
21 on your part; am I correct?

22 MS. RUDICH: Objection.

23 Q. To get good settlements.

24 MS. RUDICH: Objection, vague.

25 Artistry?

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2 Q. It required some finesse?

3 A. Yes.

4 Q. That was something that you took some  
5 pride in, am I correct?

6 A. Yes.

7 Q. Were you good at that?

8 A. Finessing, yes.

9 Q. Negotiating?

10 A. Negotiating, yes. I was good at  
11 doing that, yes.

12 MS. RUDICH: When we get a chance,  
13 could we take a break?

14 MR. HEMMENDINGER: This is perfect.

15 THE VIDEOGRAPHER: Going off the  
16 record the time is 1:09 p.m.

17 (Recess taken.)

18 THE VIDEOGRAPHER: Back on the  
19 record the time is 1:20 p.m.

20 BY MR. HEMMENDINGER:

21 (Harper Exhibit 3 for  
22 identification, Claim file 1013.)

23 Q. Miss Harper, I placed in front of you  
24 what is marked as Harper Exhibit 3. You see it  
25 is a folder that you have in front of you?

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2 A. Yes.

3 Q. And for the record what Harper  
4 Exhibit 3 is a claim file, the last four digits  
5 of the claim number are 1013. Do you see that?

6 A. Yes.

7 Q. And then each document in this has a  
8 number starting with 1 and going up to several  
9 hundred. Do you see where the document numbers  
10 are on the bottom of each page in this file?

11 A. Where it says confidential?

12 Q. Yes.

13 A. Yes.

14 Q. And each number starts 1013 and then  
15 there is dash and 42, 43 or 1, 2, 3, do you see?

16 A. Yes.

17 Q. Until we move to another file. When  
18 I give you a document number, refer to a document  
19 number page 1 or page 2 or page 19, I'm going to  
20 be referring to one of these -- to the Bates  
21 stamp number at the bottom right-hand side of the  
22 page within this claim file 1013 which is  
23 Exhibit 3. Okay?

24 A. Okay.

25 Q. What I would like to do is start with

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2 the set of documents in this file that begins  
3 with 1, do you see that?

4 A. Yes.

5 Q. The top of this page it says activity  
6 log for and then it has a claim number that ends  
7 1013?

8 A. Yes.

9 Q. Can you tell me what an activity log  
10 is at Geico?

11 A. A place where examiners would put  
12 their notes or discussions or what they plan to  
13 do on a file.

14 Q. Is this a computerized record?

15 A. Yes, it is.

16 Q. Did you make entries into it on cases  
17 from claims?

18 A. Yes.

19 Q. Do other people as well?

20 A. Yes.

21 Q. I would like to ask you to go -- if  
22 you look at this set for a second, page 1 through  
23 41, it starts at the most recent and works back  
24 to the earliest. Am I right about that?

25 A. Okay.

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2 Q. So I would like to start at the  
3 beginning which means I would like to ask you to  
4 flip to the back which is page 41. And I will  
5 point out various line items in this A Log to you  
6 and ask you questions about it. The first one  
7 begins May 31st, '08 at 5:29 p.m. Do you see  
8 that?

9 A. Yes, I do.

10 Q. You're familiar with working with  
11 these files from working with them at Geico,  
12 correct?

13 MS. RUDICH: Objection. Which  
14 files?

15 MR. HEMMENDINGER: The A Log record.

16 MS. RUDICH: This is an A Log?

17 MR. HEMMENDINGER: Yes, the whole  
18 thing is an A Log.

19 Q. You're familiar with these, aren't  
20 you?

21 A. Yes, I am.

22 Q. The first item on this, this is where  
23 there is a new claim and it was assigned to you  
24 as the TCR 2 assigned to this claim. Am I  
25 correct about that?

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2 A. Yes, that is what it looks like, yes.

3 Q. I would like you to flip over to page 39,  
4 please and go to the item dated June 1st, '08 at  
5 10:15 a.m.

6 A. Is that Sunday?

7 Q. Yes. Is this an entry made by you  
8 into the A Log?

9 A. That is what it looks like, yes.

10 Q. At the top it says TA 2 opening?

11 A. Where does it say that.

12 Q. The top line of this entry?

13 A. At 10:03.

14 Q. I'm looking at June 1st, '08. Do you  
15 see that?

16 A. Yes.

17 Q. 10:15.

18 A. 10:15?

19 MS. RUDICH: It is like slashes,  
20 look at the entry.

21 MR. HEMMENDINGER: Page 39.

22 MS. RUDICH: 39, look on the  
23 bottom.

24 A. Okay.

25 Q. Do you see where it says TA 2

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2 opening?

3 A. Yes.

4 Q. What does TA 2 opening mean?

5 A. Well, that is a -- it was like a  
6 template that we would have to follow and we  
7 basically would just sum up the claim.

8 Q. This is your -- so your opening your  
9 notes on this claim essentially?

10 A. Yes.

11 Q. The next line says New York -- it  
12 says NYR and what does that mean?

13 A. It is supposed to be an L. That  
14 means New York Risk And Loss.

15 Q. The next line over on same line it  
16 says venue, what does that mean?

17 A. Well, it is supposed to be where the  
18 accident occurred.

19 Q. Do you know what the term venue  
20 means?

21 A. As far as I know, it changed  
22 overtime, but I was told when I started that it  
23 is where the accident occurred and I believe  
24 later on they changed it.

25 Q. What did they change it to?

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2 A. To the place where I guess it would  
3 be less desirable for Geico if the claim were to  
4 go to suit.

5 Q. Did you have to make that entry as to  
6 where it would be less desirable if it were to go  
7 to suit?

8 A. It was a procedural thing, so this  
9 was a template that all the claim examiners used.

10 Q. It didn't come with Suffolk inserted  
11 there, you had to put that in?

12 A. That was because the accident  
13 probably occurred in Suffolk County.

14 Q. And later on if you had to determine  
15 where the lawsuit was going to be, did you enter  
16 that information?

17 A. Well, no. I didn't determine where  
18 the lawsuit was going to be. I was told that if  
19 the person lived in Brooklyn and the accident  
20 happened in Suffolk, then we should put Brooklyn.

21 Q. Why would you put Brooklyn?

22 A. Because that is what we were told,  
23 because Brooklyn, as I was told Brooklyn was, you  
24 know, a less desirable place for Geico. If the  
25 case were to go to suit.



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2 Q. The next line says good coverage.

3 What does good coverage mean?

4 A. Meaning that there were no coverage  
5 issues for the claim. There was no coverage  
6 issues that came up that were flagged.

7 Q. What kind of coverage issues could  
8 there be on a claim?

9 A. I guess if the policy wasn't in  
10 effect there could be -- that would be considered  
11 a coverage issue.

12 Q. Would it be a coverage issue if the  
13 accident occurred prior to the effective date of  
14 the policy?

15 A. I think that is like the same thing.

16 Q. Did you ever have to investigate  
17 whether or not the coverage was good on the  
18 policy?

19 A. Well, yes, procedurally we would have  
20 to I guess look at -- send underwriting an e-mail  
21 or whatever to see whether or not there was  
22 coverage and then they would say whether there  
23 was or not.

24 Q. They could -- underwriting could look  
25 up what their records showed; correct?

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2 A. Underwriting, right, they would tell  
3 us if in that case if the policy was in effect I  
4 would have to contact underwriting.

5 Q. How would you find out when the  
6 accident occurred?

7 A. I'm sorry?

8 Q. How would you know when the accident  
9 occurred?

10 MS. RUDICH: Objection.

11 A. I don't understand the question.

12 Q. Let's say there is an issue about  
13 whether or not the coverage was in effect at the  
14 time of the accident, am I correct? Does it ever  
15 happen -- let me back up.

16 Have you ever had experience with a  
17 claim where somebody made a claim for a damage to  
18 or an injury that occurred before the policy  
19 period?

20 A. I don't remember having a claim like  
21 that.

22 Q. Have you ever had any claims where  
23 there's a problem with coverage?

24 A. Yes.

25 Q. What kind of claims did you have

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2 where there was problems with coverage?

3 A. Where maybe there was and I don't  
4 remember an exact case, but where there were  
5 occasions where there would be no coverage, like  
6 perhaps maybe they didn't pay so there would be  
7 no coverage. There would be a flag.

8 Q. Did you ever have to investigate any  
9 issues that involved coverage by talking to the  
10 Claimant?

11 A. I mean we were told that we should  
12 call the Claimant and ask them what time the  
13 accident occurred. There was like a list of  
14 questions that you would ask. That is what we  
15 would do.

16 Q. The purpose of asking those questions  
17 was to determine -- one of the purposes was to  
18 determine whether the coverage was in order for  
19 the claim?

20 A. Well, I would get all the facts  
21 together and I would see the supervisor who would  
22 then either tell me that I should go to the RLA.

23 Q. If you thought there was a problem?

24 A. If there was a question.

25 Q. If you thought there was no question

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2 you would just write in good coverage, am I  
3 correct?

4 MS. RUDICH: Objection.

5 A. No.

6 Q. You would not write good coverage?

7 A. Who, me?

8 Q. Yes.

9 A. I'm not really understanding. I'm  
10 not understanding the question.

11 Q. Who wrote good coverage on the item  
12 that we are looking at on page 39?

13 A. I wrote that.

14 Q. You determined there was no problem;  
15 correct?

16 A. Because there was no flag that came  
17 up on -- when I'm opening up the claim screen,  
18 there was no coverage issue. There would be --  
19 if there was a coverage issue and I'm forgetting  
20 my screens because there were a lot of them. But  
21 it was a screen that we could go to and I think  
22 there would be an indication on whether or not  
23 there was a coverage issue. And if that screen  
24 came up and there was a number on there, then we  
25 would say, you know -- if there was no number

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2 which this probably was the case here, then there  
3 was no coverage problem.

4 Q. Who has the front line responsibility  
5 for determining whether there is a coverage  
6 problem or not?

7 A. All the examiners, every examiner who  
8 handles a claim has to go through the same  
9 process.

10 Q. And that would include you?

11 A. That would include me and every  
12 examiner.

13 Q. Then it says next to good coverage,  
14 BI 100/300, what does that mean?

15 A. That was like how many -- a dollar  
16 amount on how much coverage a person would have  
17 or a whole incident. So, if someone was involved  
18 in an accident, 100,000 is the most they could  
19 collect under that policy. And 300 is the most  
20 that every one can collect in that incident, in  
21 that accident.

22 Q. The next line it says "PH VERF."  
23 V E R F. What does that mean?

24 A. Policyholder verification.

25 Q. What does that mean?

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2 A. That the policyholder verified the  
3 accident, I believe.

4 Q. Are you guessing?

5 A. No. I'm trying to remember, it has  
6 been a while.

7 Q. Do you know what it means?

8 A. Policyholder verification.

9 Q. And what do you have to do to verify  
10 the policyholder?

11 A. Well, that was just to make sure that  
12 the address and everything is correct.

13 Q. Then next line says "permissive use  
14 not an issue." What does that mean?

15 A. Again, this is a template that we all  
16 would use. It meant that there was no issue with  
17 lending the vehicle.

18 Q. If there had been an issue about  
19 lending the vehicle, who would have investigated  
20 that issue?

21 A. Well, any examiner would have to --  
22 again, it's a procedural thing.

23 Q. Would you have to do it?

24 A. All the examiners would have to do  
25 it.

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2 Q. Okay, at the moment we are just  
3 talking about you. Would you have to do it?

4 A. If there was an issue, I would,  
5 again, there was questions that you would ask,  
6 yes, the policyholder.

7 Q. And you would ask -- you would be the  
8 one asking those questions of the policy holder  
9 if it was your claim?

10 A. If it were my claim, yes.

11 Q. And then it says "no late notice."  
12 What does that mean?

13 A. That the accident was reported  
14 timely.

15 Q. How do you determine whether or not  
16 it is timely or not?

17 A. Well, we were told that an accident  
18 should be reported within 24 to 48 hours after it  
19 occurs by the policyholder or somebody.

20 Q. Are there situations in which  
21 reporting after that is okay?

22 A. I guess, yes, it would be.

23 Q. What kind of situations would make it  
24 permissible to give late notice?

25 A. I would talk to my supervisor about

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2 that.

3 Q. And what the --

4 A. Or the RLA. The supervisor -- it was  
5 a chain of command. I would go to my supervisor  
6 and then if there was -- I would be told to go to  
7 the RLA if there was an issue.

8 Q. Who would identify if there was an  
9 issue?

10 A. Well, again, it's a procedural  
11 thing. If it comes a certain amount of time that  
12 we were told it, it would be a late notice issue.

13 Q. What kind of excuse could a  
14 policyholder or Claimant make for not -- for  
15 being untimely?

16 MS. RUDICH: Objection.

17 A. From?

18 Q. Could they say I was hurt or I was  
19 very distressed because my daughter was hurt in  
20 the accident?

21 A. Yes.

22 Q. And would you be the one to talk to  
23 the person saying that?

24 A. Would I be the one to talk to them?

25 Q. Yes.



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2 A. If they are telling me that?

3 Q. Yes.

4 A. Yes, I would talk to them but then --  
5 the decision would not be mine to make. It would  
6 be -- that would be something that I would then  
7 discuss with my supervisor.

8 Q. Would you tell your supervisor, well  
9 I thought the person sounded credible or I  
10 thought the person -- it sounded to me like she  
11 was making an excuse and I didn't believe it?

12 A. We could have those kind of  
13 discussions, but the decision wouldn't be my  
14 decision to make.

15 Q. The next thing it says "acc  
16 description." I assume that means accident  
17 description? It says "policy holder pedestrian  
18 ran into the vehicle." That is your writing?

19 A. Yes.

20 Q. And the next thing is "liability to  
21 be determined"?

22 A. Yes.

23 Q. "Policyholder statement needed,  
24 Claimant statement needed. Poly report needed,"  
25 correct?

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2 A. Yes.

3 Q. Who would take the policyholder  
4 statement?

5 A. I would.

6 Q. Who would take the Claimant  
7 statement?

8 A. If no attorney, then I would.

9 Q. And if there was an attorney who  
10 would take it?

11 A. I didn't get a statement.

12 Q. Did you get a police report in every  
13 case?

14 A. Not in every case. Mostly in every  
15 case I would get a police report.

16 Q. In some cases you didn't?

17 A. In some cases there might not be a  
18 police report.

19 Q. Were there cases where you decided  
20 that you didn't need to get the police report?

21 A. We were always told that we need to  
22 get a police report.

23 Q. It says "injured Jamie all  
24 information unknown."

25 A. Yes.

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2 Q. "Attorney? Will request ISO." That  
3 is the accident database?

4 A. Yes.

5 Q. Go to page 38. I would like you to  
6 go to the line item starting on the bottom, go up  
7 to 6/2/08 at 2:30. Do you see that?

8 A. Yes.

9 Q. Is that your entry?

10 A. Yes.

11 Q. Just to save time, does that say  
12 "Called and spoke with D1 and she is a crossing  
13 guard and she was unable to give a statement and  
14 does not get off work until 4 p.m. and will sub  
15 for a night call"?

16 A. Yes.

17 Q. What does D1 refer to in that case?

18 A. That means driver 1. Our driver.

19 Q. That is Geico's insured?

20 A. Yes, our insured driver.

21 Q. Will sub for a night call, what does  
22 that mean? Will submit for a night call?

23 A. Yes.

24 Q. That means you're going to get  
25 somebody else to call this person after hours?

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2 A. Well, we were told if we were unable  
3 to get them, there were people who stayed all  
4 night. Stayed up I guess until 9 or 10:00. I  
5 don't know what their hours were, but they would  
6 try to reach them at a later time.

7 Q. If she had been available to talk  
8 when you called her, would you have taken the  
9 statement from her then?

10 A. Yes.

11 Q. Is the statement basically getting  
12 down what the driver's version of the accident is  
13 and what she knows about the injuries?

14 A. The statement is a list of questions  
15 that is on CIQ that we are supposed to ask and  
16 that is basically what the statement is supposed  
17 to be.

18 Q. When you're taking the statement, do  
19 you use you instincts --

20 A. We were told that we needed to read  
21 off the CIQ to get the statement.

22 Q. Certainly I understand that as a  
23 starting point, did you ever ask additional  
24 questions to follow up on things?

25 A. Well, we were told that we would have

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2 to use the CIQ to ask those questions and then  
3 you know, you would say, okay, tell me in your  
4 own words.

5 Q. So, let's read up the page to the  
6 same date, page 38, 7:50 p.m. Is that -- there  
7 is an entry that is not by you; am I correct?

8 A. That's true.

9 Q. And that is the -- is that a summary  
10 of the interview that was made of D1?

11 A. I guess so.

12 Q. Don't guess, is that what it looks  
13 like?

14 A. I didn't take this, someone else  
15 did.

16 Q. Right, Lisa DePaula took it?

17 A. Yes.

18 Q. And it says "called for D1" right at  
19 the top?

20 A. Yes.

21 Q. And then it gives a statement of what  
22 happened in the accident, am I correct?

23 A. Yes.

24 Q. How did you use -- this is  
25 information in the file. Did you use this

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2 information later on?

3 MS. RUDICH: Objection.

4 A. I would have looked at it.

5 Q. How would you have used the  
6 information that you looked at?

7 A. You mean how would I use it --

8 Q. I will ask you a different question.  
9 Let's keep going.

10 Let's go to page 35. By the way,  
11 just so we are clear. You agree with me when we  
12 are skipping pages here, there are a lot of  
13 entries in these files that are made by other  
14 people or made by the system, am I correct?

15 A. Yes.

16 Q. So I want to go to page 35, date  
17 6/5/08, 11:16. Do you see that entry?

18 A. Yes.

19 MS. RUDICH: Can you repeat that?

20 MR. HEMMENDINGER: Page 35, 6/5,  
21 11:16.

22 MS. RUDICH: Okay, thank you.

23 Q. Do you see the entry Miss Harper?

24 A. Yes I do.

25 Q. Am I correct that what that entry

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2 describes is you received a call from the mother  
3 of one of Claimants in this case and one of the  
4 Claimants is named Alissa?

5 A. Yes.

6 Q. And the other Claimant in this case  
7 is Jamie?

8 A. Yes.

9 Q. And Alissa's mother here is telling  
10 you facts about what happened in the accident?

11 A. Yes.

12 Q. A then go a few lines up 6/5, 11:19  
13 a.m. Do you see that you had another  
14 conversation with Alissa's mother?

15 A. Yes.

16 Q. So you called her back to describe to  
17 her what she is going to have to do to make a  
18 claim in this case?

19 A. I don't know if I called her back.

20 Q. You had another --

21 A. That might be part of the same  
22 conversation.

23 Q. You think it might be the same as the  
24 call?

25 A. Yes.

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2 Q. Let's go to 6/18 -- I'm sorry, that  
3 has to be a mistake. No. Let's go to page 32.  
4 Flip some pages. Do you see looking at the  
5 bottom item it is 6/18 at 10:28 a.m.

6 A. Yes.

7 Q. Is that your entry?

8 A. Yes, it is.

9 Q. Am I correct that what you're doing  
10 here is calling the policyholder, that would be  
11 D1, the driver to find out how many pedestrians  
12 were in this accident?

13 A. In this entry, yes, it is the driver,  
14 the policyholder and the driver are the same  
15 people, yes.

16 Q. Let me go over this with you for a  
17 second. It says "Called and spoke with  
18 policyholder do to get straight how many  
19 pedestrians there were involved." Right, it says  
20 that?

21 A. Yes.

22 Q. "At first policyholder says she only  
23 struck one pedestrian but never struck the other  
24 pedestrian." That is what you wrote, right?

25 A. Yes.



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2 Q. "And when I asked her where was the  
3 second pedestrian in regard to the first  
4 pedestrian she advised me they were side by  
5 side."

6 A. Yes.

7 Q. That was a question that you had to  
8 make up, that wasn't on any template, was it?

9 A. No.

10 Q. So, we have our yeses and no's  
11 straight. It is correct that you made up that  
12 question, correct?

13 A. Yes.

14 Q. Because no template would have a --  
15 there is no template for two pedestrians getting  
16 hit by the same car and bouncing into each other?

17 A. The template was for the actual  
18 statement, so I'm not getting a statement from  
19 her. I'm trying to get how many pedestrians were  
20 actually struck in the accident.

21 Q. So you have to use your knowledge of  
22 the accident to ask her probing questions to  
23 figure out what happened, am I correct?

24 A. I'm using the statement that Lisa  
25 DePaula took.

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2 Q. And you're probing further?

3 A. Yes.

4 Q. She said "she advised me they were  
5 side by side and then you asked her if side by  
6 side, how could she be sure she did not strike  
7 the second pedestrian and then you told her I  
8 advised her there is a witness whose statement  
9 I'm waiting for who states there were two  
10 pedestrians involved." Is that what it says?

11 A. That is what it says.

12 Q. "And then policyholder then states  
13 that she hit the first pedestrian and then when  
14 that pedestrian came off the hood struck the  
15 other pedestrian." Is that correct?

16 A. That is what is on the paper.

17 Q. And then you last write "will await  
18 the witness statement." Correct?

19 A. Yes.

20 Q. So the purpose of this call and am I  
21 correct is to try to figure out who hit whom in  
22 this accident?

23 A. The purpose of the call was to find  
24 out how many pedestrians were involved in the  
25 accident.

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2 Q. And how many this driver hit?

3 A. Right, involved in the accident.

4 Q. Let's fast forward to page 24 and I  
5 would like you to go to the item on 7/16/08 at  
6 1:19 p.m. Do you see that?

7 A. Yes.

8 Q. That is an entry made by you;  
9 correct?

10 A. Yes.

11 Q. And that's -- what you have done here  
12 is summarize the police report, am I right about  
13 that?

14 A. This is Wednesday 7/16 at 1:59 p.m.?

15 Q. No, 7/16 at 1:19 p.m.

16 A. Oh, 1:19. This is what was written  
17 on the police report.

18 Q. And you summarized it?

19 A. No, this basically is what is written  
20 on the police report.

21 Q. Go toward top of the page the item  
22 1:59 p.m. And this is another entry made by you?

23 A. Okay, yes.

24 Q. Yes?

25 A. Yes.

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2 Q. At the top it says it's a little  
3 garbled, is that a misspelling?

4 A. My typing.

5 Q. That a misspelling. Okay, no  
6 problem. So you put here was "Call attorney  
7 office for Claimant Alissa, spoke with female,  
8 she explained the Claimant Alissa not on the  
9 police report." Am I reading it correctly?

10 A. Yes.

11 Q. "Due to the fact that they were all  
12 just worried about Claimant Jamie and Alissa  
13 never told anyone she was involved in the  
14 accident. Was advised that the Claimant did go  
15 to the emergency room after she got home and  
16 advised female to have attorney call back when he  
17 gets a chance to discuss." Am I right?

18 A. That is my entry.

19 Q. So at this point you're trying to get  
20 a hold of the attorney for Alissa to talk about  
21 the claim?

22 A. Yes.

23 Q. And what were you -- you didn't speak  
24 with the attorney, what was your -- what would  
25 you have wanted to cover with the attorney?

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2 MS. RUDICH: Objection,  
3 hypothetical. I don't understand the question.

4 Q. Why were you calling the attorney?

5 MS. RUDICH: Thank you.

6 A. To ask why she wasn't on the police  
7 report.

8 Q. What difference would that make to  
9 you?

10 A. Because she was making a claim.

11 Q. And if she -- how would that affect  
12 what you're handling of the claim?

13 A. You mean if she want on the police  
14 report I don't know whether or not she was  
15 involved in the accident.

16 Q. Do you think it was possible that she  
17 was making a claim and not really have been  
18 involved in the accident?

19 A. Basically my training was that if  
20 someone is involved in an accident, they are  
21 going to be on the police report. If they are  
22 making a claim they should be on the police  
23 report. So, me calling the attorney was to find  
24 out why wasn't Alissa on the police report and  
25 she gave me, the woman that I spoke to gave me

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2 the answer. That's basically it.

3 Q. Let me ask you this. Does Geico --  
4 did you get when you were at Geico fraudulent  
5 claims?

6 A. I don't think I ever had a fraudulent  
7 claim -- myself personally had a fraudulent  
8 claim.

9 Q. Did you have claims where the extent  
10 of the injuries were exaggerated?

11 A. I guess a lot of people exaggerate  
12 their injuries.

13 Q. Did you have claims where the  
14 treatment was perhaps excessive or unwarranted  
15 given the injuries?

16 A. I mean I'm not a doctor or anything.  
17 They treated how they treated.

18 Q. Are you familiar with a part of Geico  
19 called the special investigations unit?

20 A. Special investigations -- okay.

21 Q. SIU?

22 A. SIU, yes.

23 Q. What did they do?

24 A. I don't know their exactly -- I guess  
25 claims that would be fraudulent they would

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2 handle.

3 Q. Was it the job of examiners to refer  
4 cases to SIU?

5 A. For what reason?

6 Q. If you -- if the examiner suspected  
7 that there was fraud in the claim somewhere, did  
8 they refer it to SIU for further investigation?

9 A. Well, we were told, okay, this was  
10 the whole procedural type of thing, if doctor's  
11 offices called in and they reported the claim,  
12 then we would have to refer the claim. We should  
13 refer the claim over.

14 Q. Did you ever refer claims to the  
15 special investigations unit?

16 A. We were told that we had to -- I  
17 think at times there was a number. I believe  
18 there was a number of claims that you had to  
19 refer.

20 Q. You didn't refer just the first -- if  
21 it was 10, you didn't refer the first 10 claims  
22 that you got, you had to choose which claims to  
23 refer; correct?

24 A. I don't recall really any of the  
25 claims that I referred over, but if they -- if it

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2 was something that -- like a provider calling in,  
3 then that claim should be referred over.

4 Q. The ones that were referred were  
5 referred for a reason?

6 A. Like if the provider called in and  
7 they report the claim, then we would refer it.

8 Q. What other reasons could there be?

9 A. I don't recall.

10 Q. Let's go back --

11 A. There is a list of reasons I'm sure.

12 Q. Let's go back on 7/16/08. Page 24.

13 Do you have that in front of you?

14 A. Yes.

15 Q. Do you see at 3:01 you had another  
16 conversation with the policyholder?

17 A. Okay.

18 Q. Do you see that?

19 A. Yes.

20 Q. And at that time it says, "The  
21 policyholder called in again and she advised she  
22 did not strike the pedestrian with her vehicle.  
23 She states that she struck Jamie and Jamie rolled  
24 off the hood and Jamie rolled into Alissa." That  
25 is her version of how it occurred?



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2 A. Yes.

3 Q. Right?

4 A. Yes.

5 Q. Let's go to the next page which is 23,

6 a little below the center of the page, 7/17/08.

7 6:39 p.m. This is not an entry by you, is it?

8 A. No.

9 Q. Who is it an entry by?

10 A. It says Joan Roland.

11 Q. Who is Joan Roland?

12 A. I don't know.

13 Q. Would she be a field investigator for  
14 Geico?

15 A. I have no idea who she is.

16 Q. What is going on in this entry?

17 A. Joan Roland took an RI, recorded  
18 interview from a witness.

19 Q. What is a recorded interview?

20 A. It is just I guess it's a -- she is  
21 asking questions on how the accident occurred.

22 Q. Is she doing fieldwork for you  
23 investigating the claim?

24 A. She does fieldwork for all examiners.

25 Q. In this particular case for you?

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2 A. Yes, for the claim, yes.

3 Q. I'm going to fast forward pretty far  
4 up to page 6?

5 MS. RUDICH: I just want to  
6 interrupt here. Eric, I'm under the impression  
7 that this phase of discovery is limited to class  
8 issues.

9 MR. HEMMENDINGER: That wasn't our  
10 agreement. Do we need to discuss this on the  
11 record?

12 MS. RUDICH: We could discuss this  
13 off the record. What was your understanding?

14 MR. HEMMENDINGER: I recited it when  
15 I answered the interrogatories, your  
16 interrogatories.

17 MS. RUDICH: Okay. I withdraw it.

18 MR. HEMMENDINGER: Okay, thank you.  
19 So are we still on the record.

20 THE VIDEOGRAPHER: Yes, sir.

21 Q. Let's go to page 6, 10/18/08, 9:47.

22 A. I'm sorry, which page, 6?

23 Q. Yes. It says "Received call from  
24 attorney office advising me that Jamie has  
25 concluded her treatment and they will send a

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2 partial package, but are waiting some sort of  
3 doctor report. As far as Alissa is concerned  
4 they are still awaiting all of her meds, will  
5 come in and then will send." Is that what it  
6 says?

7 A. Yes.

8 Q. What is the package?

9 A. The package refers to all of her  
10 treatment.

11 Q. Am I correct that getting the package  
12 is the point at which you can then proceed to  
13 settle the case?

14 A. That is the beginning of a process.

15 Q. That leads to settlement?

16 A. That will end up leading to  
17 settlement after, but it's a process that all  
18 examiners would go through.

19 Q. Let's turn to page 5, there is an  
20 entry dated 11/22/08 at 10:50. It starts at the  
21 beginning "C 63 six month file review." C 63  
22 means six months file review, doesn't it?

23 A. Yes.

24 Q. This is an entry made by you?

25 A. It's a series of questions. It is

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2 like a program they have and you put in certain --  
3 it will ask you questions and you put in certain  
4 answers.

5 Q. Is that the Claims IQ or is it  
6 something different?

7 A. This is something different.

8 Q. So it is --

9 A. It is in doc magic.

10 Q. Doc magic is a document processor?

11 A. Yes.

12 Q. It's a form that you fill out on the  
13 computer to answer questions about the claim?

14 A. Exactly, all examiners have to do  
15 this file review.

16 Q. And that the information is input by  
17 you?

18 A. Yes, all examiners would do it.

19 Q. So if we go down through this, some  
20 of this information we have seen before. It is  
21 risk state, New York, loss state, New York. That  
22 hasn't changed from the beginning, right?

23 A. Right.

24 Q. And then you have the coverage  
25 limits, right, in the next line?

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2 A. The next line?

3 Q. Yes.

4 A. Is accident description.

5 Q. Well, maybe I'm missing something.

6 Are we on the same line?

7 A. Page 5, 10:50 a.m.

8 Q. It says coverage limits?

9 A. Coverage limits, yes.

10 Q. And then it says claims pending,  
11 right?

12 A. Yes.

13 Q. Good coverage still, accident  
14 description, then there is an entry that says  
15 liability 33 percent.

16 A. Right.

17 Q. Who made that entry?

18 A. I would have put that entry in.

19 Q. What does that mean?

20 A. Well, that means that through the  
21 process of the claim that it was determined that  
22 liability was 33 percent.

23 Q. Now, in New York you have comparative  
24 negligence, right?

25 A. Yes.

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2 Q. Do you know whether comparative  
3 negligence exists in states other than New York?

4 A. Does it exist in other states?

5 Q. Yes.

6 A. I think so, yes.

7 Q. Does it exist in every state where  
8 Geico operates?

9 A. I'm not sure. I don't believe so.

10 Q. Under comparative negligence, you're --  
11 Geico's insured's liability for the accident can  
12 be anywhere from between 0 which would be no  
13 liability and 100 percent which is total  
14 liability or any number in between; correct?

15 A. As far as New York State is  
16 concerned, it could be from 0 to 100.

17 Q. And in this case you entered 33  
18 percent meaning that you -- meaning that Geico's  
19 insured was 33 percent liable for the accident?

20 A. Well, that figure would have been --  
21 see Claims IQ basically you answer the questions  
22 in Claims IQ and it gives you a range of  
23 liability, and then you can pick. That is how  
24 you get liability through Claims IQ and  
25 sometimes a discussion with your supervisor.

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2 Q. But you have to -- basically this is  
3 a result of having analyzed the facts of the case  
4 and determining in Geico's view its insured had  
5 33 percent of the fault in this case?

6 A. Putting it into Claims IQ, yes.  
7 After you put the questions and everything Claims  
8 IQ comes up with a range.

9 Q. And then you have to pick a number  
10 within the range; correct?

11 A. A number is picked within the range.

12 Q. Who picks the number?

13 A. Well, it all depends.

14 Q. Did you pick this number?

15 A. I can't tell you for sure if I  
16 actually picked that number. Sometimes -- it  
17 could be a discussion that you had with your  
18 supervisor.

19 Q. And that --

20 MS. RUDICH: Let her finish?

21 A. I don't recall. 33 percent is an odd  
22 amount. I don't know why 33 percent is -- it's  
23 an odd amount.

24 Q. We agree that this is your entry to  
25 indicate --

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2 A. It is an entry on the liability  
3 decision that was made. But that is just -- this  
4 is not -- that is what is on the claim at this  
5 time. So it doesn't -- say even if I didn't make  
6 the liability decision, this would be what is on  
7 the claim. Because it is basically a snapshot of  
8 what is on the claim now.

9 Q. In looking over the claim, have you  
10 seen a liability percentage figure prior to this  
11 in the A Log?

12 A. Not in any of the pages that I  
13 reviewed.

14 Q. This is the first time that there is  
15 a liability figure in A Log, isn't it?

16 A. I'm not sure.

17 Q. You can look at the file.

18 MS. RUDICH: Please let her finish  
19 her response, Eric, so the response is clear.  
20 You keep interrupting her at the end and it is  
21 not going to have -- we are not going to have a  
22 clear record.

23 MR. HEMMENDINGER: Very well.

24 (Witness reviewing document.)

25 Q. Are you still reviewing?



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2 A. Yes, I am.

3 Q. Well the question on the table was  
4 whether this is the first time in the A Log the  
5 figure of 33 percent appears on 11/22/08. Do you  
6 think that is right?

7 A. I don't know. I haven't found it.

8 Q. Let's move on. Below the 33 percent  
9 number on page 5 you have some information about  
10 Jamie, right?

11 A. On page 5 at which time?

12 Q. 10:22.

13 A. 10:22.

14 Q. You have information about Jamie one  
15 of the injured people?

16 A. Okay.

17 Q. And she has an attorney, right?

18 A. Yes.

19 Q. And Alissa, she also has an attorney?

20 A. Yes.

21 Q. And at the bottom it says 2 RBI,  
22 pending. What does RBI pending mean?

23 A. Those are the bodily injuries.

24 Q. Can you please translate that line  
25 into English for me?

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2 A. There are two people and I'm just  
3 waiting for the attorney to send me the  
4 authorizations for -- because that is what we  
5 were told that we had to get the authorizations  
6 for the no-fault file which I never asked for --  
7 well, in this case I would ask for it because we  
8 had the PIP files upstairs.

9 Q. There is a line that says "Will  
10 continue to follow up with attorney and NF  
11 carrier," does NF carrier mean no-fault carrier?

12 A. Yes.

13 Q. Why would you be following up with  
14 the no fault carrier?

15 A. We were told that we had to contact  
16 the no-fault carrier.

17 Q. And do what?

18 A. And just -- basically, that's a good  
19 question. Ask them are they still treating, if  
20 the claimant was still treating.

21 Q. Why would that information be useful  
22 to you?

23 A. I guess it meant that the claim was --  
24 is going to be open for awhile if they are still  
25 treating.

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2 Q. The next line it says "RES adequate."

3 Does RES mean reserves?

4 A. Yes, that was a standard.

5 Q. What does your entry of reserves  
6 adequate mean?

7 A. Meaning that your supervisor opens up  
8 a claim with reserves and that just meant that  
9 basically that where they are was okay at this  
10 point.

11 Q. Okay based on your knowledge of the  
12 value of the claim?

13 A. To be quite honest with you that was  
14 something standard because you knew in the end  
15 whatever my supervisor's, she was going to -- she  
16 would read this over and basically she would make  
17 the decision on whether or not it was going to be --  
18 what the reserves were going to be. That was  
19 just something standard that I would put unless  
20 there was some horrific -- something horrific  
21 happened.

22 Q. What if the accident was pretty bad,  
23 did you ever say enter reserves are not adequate?

24 A. Well, if something happened bad, that  
25 would have happened a lot sooner than six months

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2 and my supervisor would have seen it and she  
3 would have set the reserves accordingly.

4 Q. Did you ever have to suggest that the  
5 reserves be adjusted in a case?

6 A. If we as an examiner, if you got a  
7 call and the attorney said -- if I got a call and  
8 they said that the person had surgery, you would  
9 go to your supervisor and advise them and she  
10 would set the reserve.

11 Q. Let's go up to page 2, 11/25/08.  
12 That is an entry by your supervisor, Miss Marlene  
13 Harris-Grant; is that correct?

14 A. The same page?

15 Q. The same page, 11/25, 10:47.

16 A. Yes.

17 Q. Go to page 4 it starts at 1/19/09  
18 right in the middle of the page. Do you see the  
19 entry --

20 A. On page 4, 1/19.

21 Q. '09, yes.

22 A. I see 1/2. 1/9.

23 Q. My mistake, 1/9/09.

24 A. Yes.

25 Q. And this is you made an entry, you're

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2 calling the attorney's office to find out where  
3 the meds are; correct?

4 A. Yes, we had to make calls to the  
5 attorney -- we called it working the file. That  
6 was part of your job that you had to make calls.

7 Q. And the next item 1/28/09, that is  
8 immediately above it -- not the next page, the  
9 next item?

10 A. Okay.

11 Q. Right above it it says "small packets  
12 of meds came in, received in, will review  
13 conference." Right?

14 A. Yes.

15 Q. What does this mean?

16 A. That means that I probably got a  
17 small packet of medicals treatment for one of the  
18 Claimants, I would need to take them up and get  
19 them in order and conference the file with my  
20 supervisor.

21 Q. The next item up from that is, it  
22 says this is 2/5/09, 5 p.m. it says, "called  
23 attorney in office with reference to meds  
24 received for both Claimants."

25 A. Yes.

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2 Q. "I did advise attorney that Alissa  
3 did not meet the threshold. I did ask the  
4 attorney what he was looking for Claimant Jamie  
5 and he advise me that he would have to call back  
6 he was in with clients." Did I read that  
7 correctly?

8 A. Yes.

9 Q. Now you use the word Alissa did not  
10 meet the threshold?

11 A. Yes.

12 Q. We talked about that earlier. Can  
13 you tell me in this case why you said Alissa did  
14 not meet the threshold?

15 A. Because I was -- when I conferenced  
16 the file with my supervisor it didn't meet  
17 threshold. I was advised that I wouldn't get any  
18 money on the file.

19 Q. I'm looking for the reference to the  
20 conference with the supervisor, when did that  
21 occur?

22 A. It would have had to have occurred  
23 between me receiving the small packet of meds and  
24 my entry on the 5th of February. I don't know.  
25 I don't determine whether something met

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2 threshold. That would be something that I would  
3 discuss with my supervisor as an examiner. Not  
4 as a TA 2 examiner.

5 Q. So when you talk about it with your  
6 supervisor, tell me how the conversations -- what  
7 do you say to her?

8 A. Well, I would basically present the  
9 treatment and she would review it and if she felt  
10 it didn't meet the -- no money was warranted on  
11 the file or didn't meet threshold, then I  
12 wouldn't get any money.

13 Q. So, the other part of this you said  
14 you did ask attorney what he was looking for with  
15 Claimant Jamie, so did you decide to ask that  
16 question?

17 A. Well, we were told -- we are told as  
18 examiners that you kind of want to know where the  
19 attorney is so that when you go in to talk to the  
20 supervisor, that, you know, you're discussing the  
21 file, that you kind of know where the attorney  
22 is.

23 Q. Do you recommend to the supervisor  
24 that the claim doesn't meet threshold?

25 A. Basically -- I mean you can recommend --

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2 I recommended a lot of things but it really  
3 wasn't my decision. It is the supervisor's  
4 decision.

5 Q. Let's talk about the supervisor is  
6 not following each of these cases the same way  
7 you are, right?

8 A. When you go into the -- in to conference  
9 a file you basically give the facts of the claim.

10 Q. And don't you also because you're an  
11 experienced and competent TA 2 say I don't think  
12 this one meets threshold, I think this one we  
13 should deny? Don't you have a conversation?

14 A. We have -- you see Claims IQ,  
15 everything has to be put into Claims IQ. There  
16 are times when you have on, I guess when you're --  
17 on your printout that you would -- it would give  
18 you a dollar amount. Just because it gives you a  
19 dollar amount don't mean that you would go in  
20 with that dollar amount or that's the dollar  
21 amount that you're going to get.

22 In the end it wasn't my decision to  
23 make whether it is threshold or not. I mean I  
24 could go in there and say I think this case is  
25 worth 100,000. If she didn't think that, then I



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2 wouldn't get the money on the file.

3 Q. But you would go -- were there cases  
4 where you would go in -- I'm sorry.

5 THE VIDEOGRAPHER: This marks the  
6 end of tape number one in the deposition of Miss  
7 Candace Harper and we are going off the record  
8 the time is 2:23 p.m.

9 (Lunch recess taken at 2:30 p.m.).

10

11 A F T E R N O O N S E S S I O N

12 3:06 p.m.

13 C A N D A C E H A R P E R,  
14 resumed, having been previously duly sworn, was  
15 examined and testified further as follows:

16 THE VIDEOGRAPHER: This marks the  
17 beginning of tape number 2 in the deposition of  
18 Miss Candace Harper, we are back on the record  
19 the time is 3:06 p.m.

20 BY MR. HEMMENDINGER:

21 Q. Miss Harper, we were talking about  
22 before we took the lunch break for you, we were  
23 on page 3 and we were looking at the entry on  
24 2/21/09 at 9:17. Do you recall that or can you  
25 go back to that in any event?

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2 A. On page 3, 9/17. Saturday?

3 Q. Right. I think I was talking to you  
4 about -- excuse me, that may not be where we  
5 were. Let me back up for a second.

6 On page 4 we covered the entry on  
7 2/5/09 where you call the attorney and told him  
8 that the threshold had not been pierced and you  
9 asked him what he was looking for; correct?

10 A. Yes.

11 Q. And the next entry, Saturday, 2/21/09  
12 it says -- it's a Claims IQ note; is that  
13 correct?

14 A. Yes.

15 Q. Am I correct that that is basically  
16 output of information that you have input using  
17 the Claims IQ system?

18 A. That I put the information into  
19 Claims IQ, yes.

20 Q. And that is part of the information  
21 that is in Claims IQ about the case?

22 A. Yes.

23 Q. It says negotiation for -- do you  
24 know what IPO 3 means?

25 A. Interested party. That is the number

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2 that I guess that corresponds with Jamie. She is  
3 interested party number 3.

4 Q. And if you read down you can see that  
5 identifies her as Jamie, right. You don't have  
6 this for Alissa because her claim does not meet  
7 the threshold, correct? Alissa is covered  
8 immediately above?

9 A. Alissa is right above her. There is  
10 a CIQ note.

11 Q. We will come back to that. Under  
12 Jamie you have some summaries of what her  
13 situation is. It says she is a student that  
14 works as a busgirl and out of work for one day  
15 and a summary of her injuries, etc. This is all  
16 information that is -- where there is written out  
17 information such as he further states, this is  
18 information that has been input by you into the  
19 system; correct?

20 A. Are you still on Saturday?

21 Q. Yes.

22 A. Saturday the 21st and you're at, you  
23 said that he?

24 Q. If you look at last part of this it  
25 says he further says there is evidence of the

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2 disability and she is a student unable to perform  
3 activity, daily living with restrictions. That  
4 is information that you recorded into the system,  
5 right?

6 MS. RUDICH: You're talking about on  
7 page 4, right?

8 MR. HEMMENDINGER: Yes.

9 A. Page 4.

10 MS. RUDICH: The top part?

11 A. Where she reports?

12 Q. Right.

13 A. I inputted that information into the  
14 system.

15 Q. And then let's go to the next item up  
16 which is --

17 A. But that is from the doctor's report.

18 MS. LESTRADE: Let's go off the  
19 record a second.

20 THE VIDEOGRAPHER: Going off the  
21 record the time is 3:10 p.m.

22 (Recess taken.)

23 THE VIDEOGRAPHER: Back on the  
24 record the time is 3:11 p.m.

25 BY MR. HEMMENDINGER:

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2 Q. So if you look on page 3, we are  
3 still on claim number 1013. There is two entries  
4 on Wednesday, 2/25, do you see those two?

5 A. Yes.

6 Q. And one of them says Jamie and one of  
7 them says Alissa.

8 A. Yes.

9 Q. And those are both entries by your  
10 supervisor, not by you; correct?

11 A. Yes.

12 Q. So the one at the bottom which would  
13 be the first one, the 2:10, it says you  
14 "discussed Alissa and it reports threshold not  
15 pierced, no significant disfigurements, etc."

16 A. That is what it says.

17 Q. That is based on information that you  
18 reported to your supervisor?

19 A. That is based on the information that  
20 she got from the medicals that the doctor -- that  
21 I inputted into the system.

22 Q. Well let me ask you, did she  
23 duplicate all the work that you do?

24 A. She reviews very closely the work  
25 that I do, yes.

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2 Q. And then it says "okay to send, no  
3 threshold denial correct below."? Do you see  
4 that?

5 A. Okay, yes.

6 Q. And it is okay because you asked for  
7 permission to do it?

8 A. No.

9 Q. And it is okay to close RBI that is  
10 the feature because you asked permission to close  
11 the feature; correct?

12 A. No.

13 Q. The item above that, 2:13 it says  
14 "briefly discuss the case for this interested  
15 person." That is Jamie, right?

16 A. Yes.

17 Q. And it says "examiner will revisit  
18 liability with scene photos."

19 A. Yes.

20 Q. The next item above that which is  
21 dated 3/7/09 at 9:46 is your entry, correct?

22 A. Yes.

23 Q. And this one says "unable to pull up  
24 Street Delivery." What is Street Delivery?

25 A. That is to get the scene photos which

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2 Miss Harris-Grant wanted me to because she felt,  
3 I guess, liability needed to be looked at  
4 closer. So she is telling me to pull up the  
5 Street Delivery so we could go over the liability  
6 again.

7 Q. Is Street Delivery a computer system  
8 of Geico's or is this a service that Geico buys?

9 A. I believe it's a service that Geico  
10 subscribes to.

11 Q. And it shows pictures of streets?

12 A. It shows pictures of streets. We are  
13 told that we have to pull up street delivery on  
14 every claim and I guess at this point I didn't  
15 pull it up.

16 Q. Then it says "Did review Google maps  
17 which shows there is a defined crosswalk for  
18 pedestrian as policy holder states in her  
19 recorded interview, pedestrians were not in walk  
20 and graduated left turn lane and policyholder  
21 should have had view of pedestrian in crosswalk  
22 and will review claims in Claims IQ."

23 A. Yes.

24 Q. When you looked at this you  
25 determined that the policyholder should have been

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2 able to see the pedestrians in the crosswalk?

3 A. You have to remember that I was told  
4 that I would have to do the -- redo the liability  
5 because my supervisor didn't agree with the  
6 liability and that I should pull up the industry  
7 delivery and look at it again.

8 Q. Look at it again, you hadn't looked  
9 at it all?

10 A. No, I -- what do you mean, Street  
11 Delivery. Go back and review liability. Street  
12 Delivery obviously wasn't pulled up on because  
13 she is asking me to pull up Street Delivery.

14 Q. This is the first time that you  
15 looked at any photos of the scene; correct?

16 A. Just it is in there, I had to pull up  
17 Street Delivery, maybe I didn't have it readily  
18 available. I don't know, I would have to go back  
19 and look at the claim to see if Street Delivery  
20 was actually pulled up. Maybe I didn't have the  
21 pictures on file. I couldn't tell you.

22 Q. In any event, based on looking at it  
23 on March 7th, '09, you determined that you need  
24 to redo the breaches in Claims IQ?

25 A. Because my supervisor wanted me to



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2 change the liability. The liability I couldn't  
3 go forward unless I revisited the liability. She  
4 didn't agree with the liability decision. So  
5 that is why she is saying the liability.

6 Q. Where does it say she didn't agree  
7 with it?

8 A. The fact that it is saying that  
9 examiner will revisit the liability with scene  
10 photos, a discussion had to have taken place  
11 there that the liability wasn't agreed on because  
12 I would have just gotten money on the file.  
13 There are discusses that take place with your  
14 supervisor that are not on the record in your  
15 A Log because you're sitting in her office and  
16 you're asking a discussion.

17 So I don't remember every discussion  
18 that I had, but looking at it it meant that she  
19 did not agree with my liability. That she wanted  
20 me to go and get the Street Delivery photos, so,  
21 I don't know if it was one conversation that took  
22 place or two or three conversations that took  
23 place with her. But it had to be -- she didn't  
24 agree with it.

25 Q. When you say she didn't agree with

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2 your liability, what was your liability?

3 A. The decision, -- the liability  
4 decision that came up in CIQ. The breaches are  
5 the questions that CIQ actually asks you. So I  
6 had to go back in and redo the CIQ breaches so  
7 that CIQ would come up with a number. Because  
8 CIQ --

9 Q. How confident are you --

10 MS. RUDICH: She is still  
11 testifying.

12 A. CIQ is a system -- I mean I was told  
13 several times by both my supervisors that CIQ was  
14 created to make your liability decision. To  
15 create the liability -- that is why we have that  
16 program.

17 Q. Who told you that?

18 A. Marlene Harris-Grant and Carol  
19 Vilar. I was told that is the purpose of it and  
20 for putting in the breaches so it would come up  
21 with a liability determination.

22 Q. Read up the page to 3/25/09, "I don't  
23 remember talking about Jamie again." Do you see  
24 that?

25 A. Yes.

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2 Q. That is a supervisor's note. You  
3 conferenced the file again and she gave you  
4 element authorization at that point; correct?

5 A. Yes.

6 Q. Let's go to page 2. This is at the  
7 bottom of the page it is 3/25/09 this is Claims  
8 IQ note but it is an entry that you made, am I  
9 correct?

10 A. Yes.

11 Q. And so let me read it to you so we  
12 could talk about it. You say "I spoke with the  
13 attorney, his initial demand was for 15,000. I  
14 advised attorney that the liability would be  
15 split 50/50 due to the fact that the pedestrian  
16 was crossing in the middle of the street on a  
17 busy road. I offered \$3,750 to settle the file.  
18 Attorney then stated that she did have" patal --  
19 can you can you pronounce that?

20 A. Patella femora syndrome.

21 Q. "I advised at the time of her" what  
22 is POS IME?

23 A. Positive IME.

24 Q. "Positive IME her knee issues had  
25 resolved."

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2 MS. RUDICH: Had resolved.

3 Q. "Had resolved. Attorney then advised  
4 me that he would mark the file for the 7500  
5 advise the attorney do not think the file is  
6 worth that much full value. Attorney then  
7 lowered demand to 5,000, advised 4,500 to settle,  
8 he advised me that he would mark the file settled  
9 and call pedestrian and advise them to accept."  
10 Is that what it says?

11 A. Yes.

12 Q. Is that an accurate recounting of how  
13 you negotiated the settlement of this claim?

14 A. Yes, with the attorney.

15 Q. How much authority did you have on  
16 this claim?

17 A. I don't know how much authority I was  
18 given on the claim, but if it had to be either  
19 more than the 45 or it could have been the 45, I  
20 don't know.

21 Q. But it could have been more I gather?

22 A. It was probably around the 45. I  
23 don't remember on this file.

24 Q. Did you ever negotiate settlements  
25 that are less than the amount that you're

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2 authorized?

3 A. Have I ever -- you mean I had a claim  
4 where an attorney asked for less than what I had  
5 on the file and I did accept it.

6 Q. Have you ever offered less than your  
7 full authorization and had it be accepted?

8 A. We were always told that Claims IQ  
9 would give you a low amount and a high amount and  
10 we had to start at the low amount.

11 Q. That wasn't my question.

12 A. Oh.

13 Q. If you had \$5,000 authority on a  
14 case, could you settle it for 4500?

15 A. It was a range so I did answer the  
16 question. The range is --

17 Q. What is the answer to my question?

18 MS. RUDICH: She is testifying and  
19 you're interrupting her again. I will keep doing  
20 this while you keep interrupting her?

21 A. If my supervisor gave me 55,000 on  
22 the file we had to put in a range on CIQ. So it  
23 would be say from 2000 to 7,000. Sometimes  
24 you're supervisor would tell what your ranges  
25 should be because if they felt your ranges were

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2 too small or too large, the ranges had to be  
3 adjusted. And we were told that we had to start  
4 off at that low -- the low range, that is where  
5 our negotiations would start. And sometimes we  
6 would even be told that sometimes we should do  
7 instead of increments of a thousand, we should do  
8 it may be \$50 or \$100. That is how we negotiated  
9 the claims.

10 Q. That is not my question.

11 A. Okay.

12 Q. If you had \$5,000 authority, could  
13 you settle it for 4500?

14 A. Yes. As long as it was within the  
15 ranges.

16 Q. So let's go back to exhibit -- to the  
17 file that we are looking at. Page 2. Right  
18 above that Claims IQ note there is a net on  
19 3/25/09 at 9:37 and I gather this concerns the  
20 other Claimant who was Alissa?

21 A. Yes.

22 Q. And it says "Attorney also advises me  
23 that he did receive the no threshold denial and  
24 was expecting it to come." Correct?

25 A. Yes.

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2 Q. Let me ask you to go into the hard  
3 copy file which is the folder, still in claim  
4 1013. You're looking right now at something  
5 else. Take the loose stuff out of the file.

6 A. Okay.

7 Q. On the left side you see the first  
8 number is 71?

9 A. Yes.

10 Q. And the right side the number is 109?

11 A. Yes.

12 Q. So I'm going to ask you to look at  
13 some documents with me and the first document I'm  
14 going to ask you about is on the right side it is  
15 109. And that is a letter on Geico stationery to  
16 an attorney; am I correct?

17 A. Yes.

18 Q. And it is signed by you?

19 A. Yes, my name comes up. It is not  
20 signed by me.

21 Q. It is over your name?

22 A. My name is there.

23 Q. There is the threshold denial letter,  
24 am I correct?

25 A. Yes, it is.

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2 Q. And quoted in the letter is the  
3 language concerning what the threshold test is?

4 A. Yes, that is the language.

5 Q. And that language comes from the New  
6 York Insurance Law?

7 A. Yes, and doc magic.

8 Q. And doc magic is a word processing  
9 program that puts it into the letter?

10 A. That creates this whole letter.

11 Q. The next page which is 110 is  
12 entitled at the top Claims Evaluation Short Form,  
13 am I correct?

14 A. Yes.

15 Q. That is a two-page document?

16 A. Yes.

17 Q. And at the top it has information  
18 about the claim and the policy?

19 A. Yes.

20 Q. And then it has in the middle  
21 information about the treatments, right?

22 A. Yes.

23 Q. And then at the bottom it has the  
24 information that we looked at earlier in Claims  
25 IQ which is your negotiating action plan;



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2 correct?

3 A. Yes, that is all the information that  
4 I put in from the medicals.

5 Q. On the second page it has a place for  
6 the supervisor to sign and this one has some  
7 writing by the supervisor, right?

8 A. Yes.

9 Q. And the supervisor says "okay to  
10 denial for no threshold seen in meds."

11 A. Yes.

12 Q. Whose signature is next to that?

13 A. I don't know, but it looks like it  
14 could be --

15 Q. Is it Marlene Harris-Grant?

16 A. It looks like it could be, but I  
17 would have to see a supervisor so I would suggest  
18 that it probably is.

19 Q. This is -- when we look at the A Log  
20 we know that Marlene Harris-Grant was your  
21 supervisor at the time of this case, wasn't she?

22 A. Yes, but if you had to make a  
23 decision on a file and say Marlene was not there,  
24 you can go to another supervisor and they could  
25 also -- you could also sit down and conference

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2 files with them. So I mean I'm going to say that  
3 it is Marlene, because it looks like her  
4 signature, but I'm not sure.

5 Q. 2/25/09, this is when you discuss  
6 with her the fact that this injury did not meet  
7 the threshold; correct?

8 A. I brought the claim in to her to look  
9 at, yes.

10 Q. The next page which is 1/12. It goes  
11 on for a few pages, is a letter from a doctor.  
12 Do you see that?

13 A. Yes.

14 Q. This is an IME report on Alissa, am I  
15 right about that?

16 A. Yes, it is.

17 Q. Who ordered the IME in this case?

18 A. Probably the PIP examiner.

19 Q. And why would the PIP examiner order  
20 an IME?

21 A. When I was a PIP examiner you were  
22 told that you should, after a certain amount of  
23 time, that an independent medical professional  
24 should look at the -- examine the patient or  
25 Claimant to see if treatment is warranted. It is

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2 causally related. That sort of thing.

3 Q. Leaving aside what the PIP examiner  
4 did with this, what information -- did you use  
5 this information?

6 A. Yes, I did use this information.

7 Q. How did you use this information?

8 A. Basically if they were cut off that  
9 is an argument that we would use.

10 Q. If what was cut off?

11 A. If their treatment -- if the doctor  
12 said they didn't need any more treatment.

13 Q. What argument would you make?

14 A. That they didn't need anymore  
15 treatment.

16 Q. Who would you argue that to?

17 A. We would discuss that with -- that  
18 would be a discussion with the attorney.

19 Q. Who would have that discussion?

20 A. I would have the discussion with the  
21 attorney -- any examiner, I mean there are  
22 certain things as an examiner that he were  
23 basically told that we needed to -- certain  
24 information that we needed or how to argue a  
25 claim. This could be used as something on our

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2 side.

3 Q. So that would be ammunition for you  
4 in negotiating with the attorney?

5 A. All claims examiners.

6 Q. Well I know. But you're the only one  
7 in this room.

8 A. Okay, so.

9 Q. I'm asking you, did you use it as  
10 ammunition to negotiate with the attorney?

11 MS. RUDICH: Objection. Vague.

12 Q. Did you use this information to help  
13 you support an argument with the attorney?

14 MS. RUDICH: Objection. Vague.

15 A. I mean I used the report as I was  
16 told that I should use the report. If they were  
17 cut off, that would be something that I could use  
18 in speaking with the attorney to try to settle  
19 the claim.

20 Q. And presumably to speak with the  
21 attorney to persuade him to accept less money  
22 than he was asking for?

23 A. Not to persuade him but basically  
24 just to state the facts of whatever the claim is.

25 Q. This was in the context of the

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2 settlement negotiations that you would be having  
3 this discussion, am I correct?

4 A. It is in the context of the amount of  
5 money that I have on the file that he needed to  
6 either accept that amount of money or not.

7 Q. Let's go to page 1062. It is on the  
8 same side of the file.

9 A. 1062?

10 Q. Yes.

11 A. You mean 0162?

12 Q. Right. I said that wrong, you're  
13 right. It is 0162 at the top it says Claim  
14 Evaluation Short Form. This was on Jamie, that  
15 this was the other teenager in the accident?

16 A. Yes, yes.

17 Q. And you have again the information  
18 about the policy, the information about her  
19 treatments, and I see she had quite a bit of  
20 treatment, it looks like she went to physical  
21 therapy 47 times. It is on the first page  
22 still.

23 A. Yes.

24 Q. And there is a box that says  
25 negotiation action plan and that is sort of a

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2 printout of information that you put into the  
3 system, am I correct?

4 A. It is the information that I got off  
5 of the medical reports.

6 Q. But you wrote this, right?

7 A. I copied it. I don't write -- I mean  
8 I put it on the action plan but these --

9 Q. Let me ask, let's go through this  
10 thing for a second. We have the New York Risk  
11 And Loss, etc. accident description and then it  
12 says liability -- now it says liability  
13 50 percent. Before it had been 33 percent, did  
14 you put in the 50 percent figure?

15 A. Yes, I had to change it. That was  
16 changed.

17 Q. But you are the one that made the  
18 change?

19 A. I inputted the change after I did the  
20 breaches in CIQ which gives me the range.

21 Q. And you input that here occupation  
22 was student and busgirl; correct?

23 A. Which I got off the medicals.

24 Q. And you inputted out work for one  
25 day?

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2 A. Probably got that off the medicals  
3 also.

4 Q. And you inputted additional  
5 information about her medical; correct?

6 A. Yes.

7 Q. On the second page of this which is  
8 0163 at the bottom of the box it says the words  
9 are "recommend to pierce the threshold based on  
10 limitation more than 90 days from the DOL." That  
11 means date of loss; correct?

12 A. Yes.

13 Q. And that is also information that you  
14 inputted; correct?

15 A. We had to do that on every single  
16 claim, yes, that we were bringing in to  
17 supervisor.

18 Q. Then there are some figures and I  
19 will come back to this and we will look at Claims  
20 IQ about the negotiation range below that;  
21 correct?

22 A. Yes.

23 Q. And then your supervisor wrote the  
24 information that is handwritten on this page. Am  
25 I right about that?

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2 A. Yes.

3 Q. And your supervisor agreed with your  
4 recommendation to pierce the threshold, correct?

5 A. Yes, she agreed.

6 Q. And then she gave you settlement  
7 authorization, it says okay to settle up to 5.2  
8 thousand, right?

9 A. Yes.

10 Q. Tell me how the conversation about  
11 what amount to offer went?

12 A. I couldn't tell you what the  
13 conversation was.

14 Q. You can't recall who said what in  
15 that conversation?

16 A. No.

17 Q. Below that there is kind of a cross  
18 and it says demand offer and there is some  
19 handwritten entries?

20 A. Right.

21 Q. That is your handwriting, isn't it?

22 A. Yes, it is.

23 Q. And I think we looked at that  
24 information earlier, the demand was 15 and you  
25 offered 3750 and the demand was -- came to 5 and



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2 then you offered 4500, correct?

3 A. I believe that is the way the  
4 conversation went but I don't recall. I don't  
5 remember.

6 Q. We looked at that on page 2 where we  
7 were talking about the narrative that you wrote?

8 A. 3/25 at 9:37 a.m.?

9 Q. Right. 9:35 a.m.

10 A. Yes.

11 Q. Look at the last part of this file  
12 which is the Claims IQ screens that is not in the  
13 folder. It is one of these loose sets. That  
14 begins on page 42 of file 1013. Claims IQ just  
15 so we know what we are talking about here is a  
16 computer system?

17 A. Yes.

18 Q. And it has various screens and I want  
19 to ask you about some of them in this case.

20 Did you have an adjuster code when  
21 you made entries into Claims IQ? For example,  
22 when we look at the first page, 0042, there is  
23 some entries that say that are a code -- it says  
24 system and then there are some that have a  
25 number. What number there was your number?

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2 A. I would be H018.

3 Q. So anything that has your H018 would  
4 be something -- that would be something that you  
5 entered into this system?

6 A. Yes.

7 Q. Now, let's go over to page 48. There  
8 is a prompt here. Basically this is asking you  
9 whether you did certain things, am I correct,  
10 under verification?

11 A. Yes, but I don't remember -- yes.

12 Q. I'm looking at one that says  
13 "verified permissive use of insured if  
14 applicable" and the entry says "yes." Am I  
15 correct?

16 A. I'm not sure if I inputted those  
17 answers.

18 Q. Is there a way to find that out?

19 A. I don't know. You have to ask  
20 Geico. I'm not sure that I put those answers in.

21 Q. Are you sure you didn't or you just  
22 don't know?

23 A. To be quite honest, they don't even  
24 look -- they don't look familiar to me. I mean  
25 it looks like something that is part of CIQ, but

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2 if someone else is working it or if someone took  
3 a statement like Lisa DePaula she could have  
4 input the information when she took the  
5 statement, I don't know.

6 Q. I'm not terribly concerned with  
7 whether or not you verified permissive use of  
8 insured if applicable or not in this particular  
9 file. Is that something that would be, verifying  
10 permissive use, be something that would be  
11 standard operating procedure for the examiner on  
12 a file?

13 A. You mean standard for all examiners?

14 Q. Yes.

15 A. Yes.

16 Q. And when we use the examiner, does  
17 that include the job that you held, TCR 2?

18 A. Yes.

19 Q. Verifying permissive use means that  
20 if somebody else was driving the car, you had to  
21 ascertain whether that was with the permission of  
22 the owner of the insured?

23 A. If the owner, if you talked to the  
24 policyholder and the policyholder basically said  
25 I never gave them permission, would you ask did

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2 you give such and such permission to drive your  
3 vehicle. That is basically verifying permissive  
4 use if the names aren't the same, basically. If  
5 the names are the same and they live in the same  
6 household, you just assume if it is their son or  
7 they are on the policy. If it is a different  
8 name you would ask them, did you give them  
9 permission to drive the car, that was the  
10 question that all examiners would ask.

11 Q. Did you ever have disputes about  
12 that? I mean were there ever disputes about  
13 whether the use was permissive or not?

14 A. I might have had a claim where there  
15 was discussion about permissive use, yes.

16 Q. What would you have to do to resolve  
17 that?

18 A. I don't know if I ever went to the  
19 supervisor about it, but -- I don't know what the  
20 procedure would be. I'm trying to think of an  
21 instance where I had a permissive use issue. But  
22 I mean it didn't really come up very often for  
23 me.

24 Q. Let's move on to the next page, 49.  
25 We were talking earlier about redoing breaches;

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2 correct?

3 A. Yes.

4 Q. And this -- page 49 and page 50 of  
5 this exhibit are screens from Claims IQ which  
6 show you entering the breaches in this claim;  
7 correct?

8 A. These are the breaches that were  
9 entered into the claim.

10 Q. Who entered them in this case?

11 A. I can only assume myself since I said  
12 I had to redo them. I don't know if this one is  
13 the one before or this one is the one after.

14 Q. We look at the claims -- at the A Log  
15 file. Did any other claims examiner work this  
16 file?

17 A. There was an examiner that took the  
18 RI.

19 Q. Did anyone else do anything else with  
20 this file on the claims liability side?

21 A. I think there was another person that  
22 we saw in there in the file. But I mean, I mean  
23 I would say that if I said I was going to redo  
24 them then I was going to do them over.

25 Q. So --

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2 A. So if this is the do over, I probably  
3 did it.

4 Q. Let's start with the first one.  
5 Actually let's go down the left-hand column  
6 first. You have various rules of the road; is  
7 that correct? Such as observe right of way, obey  
8 rules of the road, conform to traffic code,  
9 maintain control of vehicle, take evaluation,  
10 maintain proper look out. Right?

11 A. Yes.

12 Q. Are you with me?

13 A. Yes, I am.

14 Q. Under each of these potential -- each  
15 of these rules there are each of the parties  
16 involved in the accident, Jamie, Alissa and the  
17 driver; correct?

18 A. Yes.

19 Q. And then for each of them there are  
20 five choices which are "no breach." The next item  
21 means "Yes breach but no approximate cause." The  
22 next one means "yes breach but low approximate  
23 cause." The next one means "yes breach but  
24 medium approximate cause." And the last on means  
25 "yes breach but high approximate cause." Am I

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2 reading that correctly?

3 A. Yes.

4 Q. For this one you entered under the  
5 first one, under "observe right of way, Jamie  
6 yes, low; Alissa yes, low." And Kim, I assume  
7 that was the driver," yes, medium"?

8 MS. RUDICH: Objection.

9 Q. Okay; is that correct?

10 A. Those are the breaches, yes.

11 Q. And that is information that you  
12 input?

13 A. Again, the only way that I would know  
14 that I put in every single one of these breaches  
15 to see if my code was in there.

16 Q. Let me just ask you, is it standard  
17 operating procedure to fill out Claims IQ on a  
18 claim?

19 A. Yes, but sometimes when you do sit  
20 with your supervisor and you do conference a  
21 file, I know a lot with Miss Vilar, that she --  
22 we could go and she would change the breaches as  
23 we sat there.

24 Q. Let's go to page 44 just so we have  
25 this clear. That is page 43, I'm sorry. This is

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2 what is known as a footprint, right?

3 A. Exactly.

4 Q. And it shows who made the entry at  
5 various times?

6 A. Exactly.

7 Q. On this page, the date of 3/7/09,  
8 liability assessments were made by and you could  
9 see where you have the low, mediums and highs  
10 being put in; correct?

11 A. Exactly, so, yes I did change them.

12 Q. And those are you?

13 A. Those are me.

14 Q. And those are you changing the  
15 original ones?

16 A. Yes.

17 Q. Go back to page 49. We could go  
18 through each of these rules and each of these  
19 people and for each of them you put in no breach  
20 or some degree of breach, right?

21 A. Right.

22 Q. And that is based on your  
23 investigation of the accident; correct?

24 A. That is based on me going back, yes.  
25 I was instructed to go back and redo the



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2 liability.

3 Q. I understand that. But the facts  
4 when you redid it, the facts were based on the  
5 fact what you knew about the accident from prior  
6 investigation and then you had also seen photos  
7 of the intersection; correct?

8 A. Yes, that I got the Street Delivery.  
9 Now I believe if I did get the Street Delivery  
10 that there was probably a discussion with my  
11 supervisor about that and I probably did go back  
12 and change -- I had to go back and change the  
13 breaches, because I wouldn't have gotten any  
14 money on the file.

15 Q. And you put these items into the  
16 claim IQ?

17 A. Yes, you have to put something in  
18 there.

19 Q. Go to page 51. At the top it says  
20 evaluate liability; correct?

21 A. Yes.

22 Q. Based on what you previously put in  
23 no breach, high, medium, low, etc., claim IQ  
24 gives you a range of liability for each person;  
25 am I right about that?

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2 A. Yes, it does.

3 Q. And it looks in each case there is a  
4 20 point spread in the range.

5 A. In this instance.

6 Q. For Kim who is the driver and she is  
7 the only one who is potentially liable, the range  
8 is 33 to 53 percent; correct?

9 A. Yes.

10 Q. And then somebody has to input the  
11 figure 50, that is a choice, correct?

12 A. Well I had to change the liability,  
13 the liability was 33 and I had to change it  
14 because I was told that she didn't agree on it.  
15 My supervisor didn't agree so it had to be  
16 changed.

17 Q. Can you testify that you actually  
18 recall the conversation with your supervisor?

19 A. No, I don't recall the conversation,  
20 but if I'm told to go back and investigate a  
21 claim more, that means she didn't agree with the  
22 liability.

23 Q. Is it possible that she just looked  
24 at it and she said have you looked at pictures  
25 and you said no and she said look at pictures

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2 before you finalize this?

3 A. If I'm bringing a claim to my  
4 supervisor for conferencing a file, I already  
5 felt that I was confident in the decision that I  
6 made.

7 Q. In this case she didn't agree with  
8 your decision?

9 A. She wanted me to go back and review  
10 the liability.

11 Q. So then you made a different decision  
12 and you put in 50 percent?

13 A. I had to put in -- yes. I couldn't  
14 come back and say, oh, I say it is 33 percent. I  
15 had to look at liability again.

16 Q. Are there claims where you're  
17 supervisor did not kick it back to you to redo  
18 and the numbers that you came in with the first  
19 time were accepted?

20 A. As liability?

21 Q. Yes.

22 A. Yes. As long as it is between the  
23 ranges that Claims IQ gives you.

24 Q. Most of the time you didn't have to  
25 redo your investigation, did you?

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2 MS. RUDICH: Objection.

3 MR. HEMMENDINGER: Let me try it  
4 again, I don't know what the objection is.

5 MS. RUDICH: Most is vague and  
6 ambiguous.

7 MS. LESTRADE: It is more than  
8 50 percent.

9 MS. RUDICH: So then ask it that  
10 way, that would be proper.

11 Q. Let me ask you, what percentage of  
12 the cases do you think were approved without  
13 being told to go back and redo the Claims IQ?

14 MS. RUDICH: Objection.

15 A. I really couldn't tell you. I don't  
16 know what the percentage would be. I can only  
17 say that it wasn't on every case.

18 Q. It wasn't on every case that you were  
19 sent back?

20 A. No.

21 Q. Most cases you were not sent back?

22 MS. RUDICH: Objection. Misstates  
23 the testimony.

24 Q. Are we on the same page here? Most  
25 of the time you did not have to redo the Claims

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2 IQ liability determination?

3 MS. RUDICH: Objection.

4 A. I could say there were times when I  
5 didn't have to redo it.

6 Q. Do you know what -- this was your  
7 job.

8 A. Yes.

9 Q. You lived with this, was it usual or  
10 unusual in your experience to have to redo the  
11 Claims IQ?

12 A. It was often that I redid the Claims  
13 IQ.

14 Q. I didn't ask you that. Often could  
15 mean 10 times out of a hundred.

16 MS. RUDICH: When I said when I  
17 objected to most you said no objection and now  
18 she is saying often and you're saying no.

19 MR. HEMMENDINGER: I'm allowed to  
20 probe, okay.

21 MS. RUDICH: Objection.

22 Q. Do you think it happens in a majority  
23 of cases?

24 MS. RUDICH: Objection, you asked  
25 her the same question.

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2 MR. HEMMENDINGER: Please, counsel,  
3 I have all the time in the world.

4 MS. RUDICH: So do we. So do we.  
5 If she doesn't remember, she doesn't remember.

6 A. It happened often. It happened often  
7 that sometimes I would be sitting there specially  
8 with Miss Vilar and we would have to go over and  
9 she would change the breaches.

10 Q. You don't know what percentage of the  
11 cases that is?

12 A. I don't know the percentage of  
13 cases. I would be guesstimating.

14 Q. And often is a guesstimate too,  
15 right?

16 A. Well, you're pressing me to give you  
17 an answer, so often is the best. Often enough.

18 Q. Often enough. Often enough for what?

19 A. Often enough for -- if my supervisor  
20 didn't agree then I would have to go back and  
21 make the changes.

22 Q. Let's move on. Let's go to page 54  
23 and these -- this is an injury evaluation page,  
24 am I correct?

25 A. Yes.

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2 Q. For example, it reports this is on  
3 Jamie, am I right? We could tell by looking at  
4 the bottom of the page.

5 A. Yes.

6 Q. And so it reports one her injury is  
7 left strained knee; correct?

8 A. Yes.

9 Q. And then there are various, below  
10 that various items, medical history, treatment,  
11 delay in treatment, lapse in treatment, course of  
12 treatment, correct?

13 A. Yes.

14 Q. And below that, beside that there are  
15 little windows for you to enter an answer;  
16 correct?

17 A. Yes.

18 Q. And are you the person who chooses  
19 what entry to put into that -- into those answer  
20 spaces?

21 A. I get all of that information off the  
22 doctor's medical reports. I'm the one who  
23 actually -- there is a drop down and you pick one  
24 of the drop down answers.

25 Q. Based on what you read in the medical

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2 file?

3 A. Based on what is in the medical file.

4 Q. But that requires you to take a lot  
5 of information in the medical file and boil it  
6 down to some conclusions, am I correct?

7 MS. RUDICH: Objection?

8 A. No, no, these aren't conclusions.  
9 These are facts that are in the medical file.

10 Q. Let me ask you this, treatment for  
11 injury and then it says next to that causation,  
12 what does causation mean?

13 A. I believe they are saying is this --  
14 was the injury caused by the accident.

15 Q. Now, does a doctor make that  
16 determination?

17 A. Yes.

18 Q. How does the doctor know the facts of  
19 the accident, does a doctor conduct an  
20 investigation of the accident?

21 A. There is history that the doctor --  
22 when a person comes in they tell the doctor that  
23 how the accident occurs. It is in the IME report  
24 and in all doctor's reports.

25 Q. What about delay in treatment, is



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2 that something that the doctor reports?

3 A. Delay in treatment is if the person  
4 didn't go -- we were told if the person doesn't  
5 go straight to the ER from the scene and they go  
6 a week later, that is delay of treatment. They  
7 didn't go right away.

8 Q. Now, below that it says "determine  
9 impact on lifestyle." Correct?

10 A. Yes.

11 Q. And there is four spaces you can fill  
12 in, low, -- I'm sorry "none, low, medium and  
13 high"?

14 A. Yes.

15 Q. And you make the input into one of  
16 those --

17 A. We were told that we needed to put in  
18 -- I was told that I should put in low on some  
19 case, yes. If it were soft tissue issues, that  
20 is what I was told, that I should put in the low.

21 Q. Would I ever find in one of your  
22 files that you put in something other?

23 A. Yes, if there was a broken leg, then  
24 you would have to put in something different.  
25 But if it was soft tissue injury, if it is soft

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2 tissue injury then would you put in low. If it  
3 is a broken leg, surgery then you would put in  
4 medium to high. But you could never put in none.

5 Q. When you say we were told, where is  
6 that -- is that part of the training material?  
7 Where would I look for where were you told that?

8 A. Well, we -- when Claims IQ was rolled  
9 out there was a lot of changes going on.  
10 Sometimes we would get e-mails every day about  
11 different changes and different things that you  
12 had to do. Until I believe we had that training,  
13 that CIQ training where every one had to be  
14 brought up to speed on CIQ because people were  
15 doing things or understood it differently. I  
16 don't know if it is written down, sometimes there  
17 are supervisors that do things differently. Or  
18 trainers that tell you differently, but it was  
19 never actually all that clear.

20 Q. You say it is how to use this Claims  
21 IQ is not clear --

22 A. Times, it is not clear for a very  
23 long time. There were still questions about lots  
24 of things in it.

25 Q. If we go to page 56, there is a place

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2 for you to enter your threshold determination; am  
3 I correct?

4 A. Yes.

5 Q. And then if we go to page 57 it looks  
6 like the computer has generated a range of  
7 numbers for general damages for pain and  
8 suffering. Is that right?

9 A. Is this on page -- okay, yes.

10 Q. 57?

11 A. Yes.

12 Q. What numbers did the computer  
13 generate?

14 A. On here it generated 8,800 to 12,000.

15 Q. And next to that a figure of \$7500 is  
16 entered; correct?

17 A. Yes.

18 Q. And you made that entry; correct?

19 A. Yes, we have to put a number in  
20 there, those two numbers.

21 Q. That is lower than the numbers?

22 A. It is higher than -- oh, is it? Oh,  
23 it is not supposed to be. I would get a  
24 downgrade for that file.

25 Q. We go to the next page, okay, and

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2 your \$7500 number comes over under pain and  
3 suffering. That is the number that you entered;  
4 correct?

5 A. Yes.

6 Q. And then the computer -- then there  
7 is a range and that is the number that you --  
8 there is another place for you to enter numbers  
9 and it is the range of 7500 to \$10,000. Those  
10 are numbers that you input; correct?

11 A. Yes, those are numbers that I put  
12 in.

13 Q. And both the high and low are lower  
14 than the number that the computer generated, am I  
15 correct?

16 A. Yes.

17 Q. And then the computer takes your  
18 50 percent liability figure and divides that in  
19 two to give you an adjusted range, correct? That  
20 is page 59.

21 A. Let me go back to this page. This is  
22 the way that I understood it. This number here.

23 Q. Which number where --

24 A. No, go ahead.

25 Q. Based on your 50 percent the computer

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2 has divided your low number in half and your high  
3 number in half to give you an adjusted range?

4 A. Yes.

5 Q. And the adjusted range is 3750 to  
6 5,000, right?

7 A. Yes.

8 Q. And that is the impact of New York's  
9 comparative negligence, your assessment of the  
10 value of the claim is divided in half in this  
11 case because it is 50 percent, right?

12 A. Yes, that is it.

13 Q. If it would have been 33 percent it  
14 would have been a different figure?

15 A. Yes, the computer system.

16 Q. So, would it be fair to think that  
17 when you went in to talk to Miss Harris-Grant  
18 about this claim you say you think the settlement  
19 range is going to be 3750 to \$5,000?

20 A. Yes.

21 Q. And she gave you some margin for  
22 error, she gave you \$5200?

23 A. She gave me what she felt would be  
24 the top dollar on the claim, yes.

25 Q. What did you ask for?

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2 A. I asked for the money -- something in  
3 between there.

4 Q. Would you ask for a dollar figure or  
5 would you ask for a range of figures?

6 A. I'm trying to think back. Would I  
7 come in and ask for a dollar figure. I think it  
8 would be between ranges.

9 Q. Typically when you came in, did you  
10 come in and ask for a range or did you come in  
11 with a particular figure and say this is my  
12 figure?

13 A. I think it was a range. It would  
14 have to be the range that CIQ is showing.

15 Q. And then we know the next page shows  
16 and we already know this from our discussions on  
17 page 60, it shows that you settled the claim for  
18 \$4500; correct?

19 A. Yes.

20 Q. Let's go to page 63 for a second.  
21 This is a page on -- this is a page on Alissa.  
22 Do you see in the bottom on "impact on  
23 lifestyle"?

24 A. Yes.

25 Q. There is none in that; correct?

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2 A. Yes.

3 Q. So that is a possible outcome?

4 A. Yes.

5 Q. There was no discussion -- because  
6 there was a determination of no threshold there  
7 was no discussion of money for her, correct?

8 A. I would have written up the meds I  
9 believe and taken it in to be conferenced so that  
10 discussion would have been taken place with the  
11 supervisor.

12 Q. But you as I think we saw before, you  
13 recommended not to pierce the threshold on her  
14 and that was agreed to so there was no offer  
15 made; correct?

16 A. Well, there was no offer made because  
17 my supervisor felt that it met no threshold.

18 Q. After you presented the case to her?

19 A. After I presented the facts of the  
20 claim to her, yes.

21 Q. Before I move on, just one more  
22 question. Earlier on you talked about the  
23 procedure for doing a recorded interview and you  
24 say there are some standard questions for that.

25 A. On CIQ you are supposed to follow

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2 standard questions.

3 Q. Can you omit questions that you don't  
4 think should be asked?

5 A. You're not supposed to omit the  
6 questions that pertain to the accident. If there  
7 is 100 questions on there it would give you like  
8 one question would lead you to the next  
9 question.

10 Q. Right, but accidents come in all  
11 kinds of infinite varieties, isn't that true?

12 A. Yes.

13 Q. And you have to tailor -- select  
14 which questions to ask based on what happened in  
15 the accident so you're not asking irrelevant  
16 questions?

17 A. I guess yes.

18 Q. You don't want to sound foolish when  
19 you ask the questions, you have to adapt them to  
20 the situation?

21 A. I mean if it was raining and, I  
22 really don't remember all the questions on CIQ,  
23 but I'm sure one or two of them didn't make  
24 sense, no one would ask that.

25 Q. You wouldn't ask them if they didn't



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2 make sense to the accident, so it was a guide for  
3 you rather than forced?

4 A. No, it was forced. You were supposed  
5 to do it.

6 Q. Every single question?

7 A. You were supposed to do the CIQ.  
8 Like I said, I was told that the CIQ was created  
9 to make the liability decision.

10 Q. Let's go to another file. We could  
11 close this one out. The next one is the one  
12 labeled 1020.

13 MR. HEMMENDINGER: Mark this as  
14 Exhibit 4 please.

15 (Harper Exhibit 4 for  
16 identification, File labeled 1020.)

17 Q. Okay, so you have in front of what is  
18 Harper deposition Exhibit 4. And it has the  
19 statement structure as the previous exhibit. And  
20 I would like to start with the A Log again which  
21 is page 1. And actually I want to go to the --  
22 again we have to work from the back. So that is  
23 page 39. On page 39 we see that this claim is  
24 assigned to you?

25 A. Yes.

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2 Q. And you're the first examiner on this  
3 file. It is not being transferred to you by  
4 somebody else that has done any work on it,  
5 right?

6 A. As far as liability is concerned,  
7 yes, I would be the first examiner on the file.  
8 I don't know if PIP was open or PIP has any  
9 entries.

10 Q. Let's go on to page 38 and there is  
11 an entry on 1/10/07 at 9:52?

12 A. Yes.

13 Q. And is that an entry that you made?

14 A. Is that my user code down there? I  
15 don't know. I don't think I made that. No, I  
16 didn't make that entry.

17 Q. What does it say at the top?

18 A. It says "new diary entry for Candace  
19 Harper." Not by. I don't think I made that  
20 diary entry.

21 Q. It says, "losses under investigation  
22 requires resolution of the liability issue."

23 A. Right.

24 Q. And that would be -- that is a diary  
25 entry for you; correct?

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2 A. Yes. I guess a systems entry.

3 Q. Which means that you -- the  
4 resolution of the liability issue is something on  
5 your to-do list at this point, your diary?

6 A. Yes, it says that after a certain  
7 time it needs a number put in there.

8 Q. Then if we read up a couple of lines,  
9 10/10/07 at 10:37 there is an entry that starts  
10 "recorded interview added".

11 A. Yes.

12 Q. And that is entered by Candace  
13 Harper; correct?

14 A. That is a system generated note, but  
15 I would have had to prompt the system to put that  
16 in there, yes.

17 Q. Does that mean that you took a  
18 recorded interview of Claudette?

19 A. That means that at that point I  
20 attempted to take a recorded interview of  
21 Claudette.

22 Q. Did you take one or did you attempt  
23 to take one?

24 A. I don't know. Because sometimes you  
25 can start one and something happens and you have

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2 to end it, so it is possible.

3 Q. It says "duration is 561 seconds."

4 A. Yes, okay, then yes, I did.

5 Q. That is about ten minutes, isn't it?

6 A. Yes, okay, yes, I took a recorded  
7 interview.

8 Q. Who is Claudette in this accident?

9 A. She was IP 1.

10 Q. What does that mean?

11 A. She could have been the driver. I'm  
12 not sure who she was. She could have been the  
13 driver. I think she probably was the driver.  
14 That is probably why I would have had to take --  
15 it's a pedestrian so she was probably the driver.

16 Q. Go to page 37 please. At 10/10/07,  
17 11:05. And that is basically after you just got  
18 off the phone with Claudette; correct?

19 A. Okay.

20 Q. When you say okay, I don't know  
21 whether you're saying I understand what you're  
22 saying or you're agreeing with what I'm saying.

23 A. I understand.

24 Q. But I'm right?

25 A. Yes, it would have been.

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2 Q. And what you're doing is making notes  
3 for the file about what happened -- what you  
4 learned from your interview with Claudette;  
5 correct?

6 A. Was it right after? I don't know if  
7 it was right after I got off the phone with her.  
8 But it is the same day. This is at 11:05 and it  
9 says that I reported the time at 10:27. So that  
10 is half hour almost.

11 Q. It appears to be open season on  
12 walking children because this is another claim  
13 where somebody hit a child with a car, right?

14 A. Yes.

15 Q. "Rolled on the hood and rolled off."

16 A. Yes.

17 Q. This is your recording of Claudette's  
18 version of what happened?

19 A. Yes.

20 Q. And then right after that on the same  
21 day 11:09 you opened the file, correct?

22 A. I did a TA 1 yes, opening.

23 Q. And that is a -- we have talked about  
24 that before, it is the same thing that you talked  
25 about earlier?

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2 A. Yes, a template.

3 Q. You write in this one it says  
4 liability 100 percent; correct?

5 A. Yes.

6 Q. What is the legal significance of  
7 liability 100 percent?

8 A. I didn't really handle legal matters.

9 Q. What is the practical consequence  
10 then?

11 A. That a hundred percent meant that you  
12 were at fault fully for the accident.

13 Q. A little above that at 10/10, 11:15  
14 you received a demand letter from -- you're  
15 entering the fact that you received a demand  
16 letter from the attorney; correct?

17 A. Yes.

18 Q. And he is demanding the policy limit?

19 A. Yes.

20 Q. What is the policy limit on this  
21 case?

22 A. It must have been 25,000.

23 Q. And you know that from looking at the  
24 entry below?

25 A. I know that because I only can handle

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2 claims up to 25,000.

3 Q. Let's fast forward to page 25, if you  
4 could skim the pages that we are passing over  
5 there is a lot of PIP activity, correct?

6 A. Yes.

7 Q. At 4/13/07 at 4:40 there is an entry  
8 which is your three-month file review; correct?

9 A. Yes.

10 Q. In this particular case it says "Will  
11 continue to follow up with attorney and no-fault  
12 carrier." Correct?

13 A. Yes.

14 Q. What information would you be seeking  
15 in this instance from your no-fault carrier?

16 A. We are told on every single claim,  
17 specially C 71 and C 63 we should contact the  
18 examiner and find out what the status of the  
19 claim was.

20 Q. Below that it says "STI reserve."  
21 What does STI mean?

22 A. Soft tissue.

23 Q. What does RES mean?

24 A. Those are to reserve.

25 Q. There is a number next to it, 9250.

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2 A. Yes.

3 Q. What does the 9250 mean?

4 A. We were given parameters on how we  
5 should -- well, not how we are setting reserves,  
6 because the supervisor sets them. But we were  
7 told that we would have to put in a number  
8 amount. So if it were say 50 percent liability  
9 with soft tissue injuries then it would be half  
10 that amount. If it were say she had more serious  
11 injuries, most of the time I would just say set  
12 reserves accordingly.

13 Q. Were you the one who initially  
14 recommended what level of reserves to set to the  
15 supervisor?

16 A. No.

17 Q. Why did you put this number in it?

18 A. The reserves have already been set.  
19 I have to put the number in because we were told  
20 that we had to put the number in by -- as soon as  
21 the claim comes in the reserves are -- they have  
22 a standard amount of reserves in and when your  
23 supervisor reviews -- if my supervisor felt that  
24 the reserves should be higher then she would set  
25 them higher. But at this point I believe we were



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2 told that we have to put in a reserve amount  
3 because as you saw in the other case that I put --  
4 I didn't put a dollar amount, I just put set  
5 reserves accordingly. Not set accordingly. I  
6 put reserves are adequate. Sometimes I would put  
7 in set reserves accordingly.

8 We were told that we had to put a  
9 number amount and I believe that was by Miss  
10 Vilar at that point that we had to put a number  
11 amount in.

12 Q. That number was for her guidance?

13 A. I don't know why she wanted us to do  
14 it. She gave us a you piece of paper and on it  
15 it had if it was soft tissue injury and it was  
16 50 percent that is what you put in. If it is 100  
17 percent, this is what you put in. That is what I  
18 followed.

19 Q. Let's go to page 24. There is an  
20 entry 4/19/07 at 6:08 p.m. Do you see that?

21 A. Yes.

22 Q. It says, "Discuss claim with no-fault  
23 department." Can you tell us what the rest of  
24 that line means?

25 A. That means there were negative ortho

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2 IME.

3 Q. It says "negative ortho/PT."

4 A. Physical therapy and massage therapy.

5 Q. And there is a number next to that,  
6 what does that mean?

7 A. Probably that could have been the cut  
8 off. The effective date of the IME when they  
9 would be cut off by the doctor. So if the doctor  
10 said no more treatment, then you would say, okay,  
11 as of 4/5/07 there would be no more treatment.

12 Q. On panel 23 at 4/27/07 there is an  
13 entry from Carol Vilar; correct?

14 A. Yes.

15 Q. And she is reviewing this file and  
16 one of the things she is pointing out to you  
17 there is a discrepancy between what you put in  
18 the C 71 and what Claims IQ says about the  
19 liability percent, correct?

20 A. Yes.

21 Q. And those are both numbers that you  
22 entered but they are not the same number?

23 A. Not necessarily, no. Well, I mean I  
24 guess, yes, I guess I did put in 100 percent,  
25 because this is not -- yes, but on some cases it

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2 would come from a different department. But in  
3 this case, no, it was, yes.

4 Q. In the next line up is your entry  
5 that you're going to correct the C 71 to conform  
6 to the Claims IQ; correct?

7 A. Yes, she is telling me to correct it,  
8 yes.

9 Q. Let's go to page 21, 6/21/07.

10 A. Which one is this?

11 Q. 6/21/07. Page 21.

12 A. 6/21/07?

13 Q. Yes. That is another entry by you  
14 and this is the same thing that you went through  
15 in the other case, you're calling the attorney's  
16 office for the treatment information and the  
17 meds?

18 A. Yes, we always have to call. Every  
19 30 days there has to be some entry on the file.

20 Q. Go to page 19 and you get to a  
21 six-month review here; correct?

22 A. Yes.

23 Q. And you're summarizing information  
24 about the claim and it still says liability 100  
25 percent, correct?

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2 A. Yes.

3 Q. I'm not making a big deal, that is  
4 just a mistake, correct, at this point? It's a  
5 discrepancy that you should have corrected?

6 A. What did Carol say? I can't remember  
7 what she said I should do. She said that CIQ and --

8 Q. Go back to page 23.

9 A. Oh, no. That is correct, I guess,  
10 yes, I should have corrected that. What I would  
11 do sometimes is cut and paste it. So if it was  
12 in my previous, this part, because usually this  
13 part doesn't change, that -- it should be  
14 50 percent.

15 Q. The last entry in this is "reserves  
16 adequate"?

17 A. Yes.

18 Q. We read up the page after you  
19 write-up the six-month file review on 7/30/07  
20 your supervisor reviews it, correct?

21 A. Yes.

22 Q. And it says "push attorney." She  
23 wants you to get the case settled, correct?

24 A. Yes, push attorney. Push to close,  
25 push to close the file.

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2 Q. On 8/31/08 on the same page at 8:06  
3 you logged that you have gotten some meds from  
4 the attorney?

5 A. Yes.

6 Q. The next page -- I'm sorry, page 18  
7 to 19 at the bottom of 18 going on to 19 on  
8 8/31/07 is the Claims IQ note which shows the  
9 negotiation strategy and this is based on  
10 information that you input and taken out of  
11 Claims IQ; correct?

12 A. This is information that I got off  
13 the medicals that I received.

14 Q. Let's look at the end of that entry,  
15 it says "Recommend to pierce the threshold based  
16 on limitations more than 90 days from the date of  
17 loss." Correct?

18 A. Yes.

19 Q. And that recommendation was made to  
20 your supervisor; correct?

21 A. Right, we were told that we -- there  
22 were basically two reasons why we could get money  
23 on the file and this was one of the reasons. So  
24 she liked us to put that on the file.

25 Q. It is important in the piercing the

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2 threshold is very consequential in these cases,  
3 isn't it?

4 A. It is inconsequential because my  
5 determination didn't make a difference. It was  
6 going to be the supervisor's determination that  
7 was going make the difference.

8 Q. The consequence to the case is  
9 whether the person gets money or not. No  
10 threshold, no money, right?

11 A. Right, but even if I were to write on  
12 here I don't feel it met threshold, if she did,  
13 then she would put money on the file.

14 Q. I understand --

15 A. I was just told that I had to put  
16 that. I had to put something. I had to make a  
17 recommendation.

18 Q. You had to put your best judgment?

19 A. I had to put a recommendation. My --

20 Q. And you came up with a recommendation  
21 based on your own best judgment?

22 A. The recommendation that I was --  
23 there were basically two things either it met  
24 threshold or I would recommend to pierce the  
25 threshold based on limitations?

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2 Q. Right. And that was based on your  
3 own evaluation of the facts of the case?

4 A. Based on the information that the  
5 doctors had in the medicals.

6 Q. You took that information, you  
7 applied your own thought process to it and  
8 recommended whether to have pierced the  
9 threshold; am I right about that?

10 A. We were told that we had to make a  
11 recommendation.

12 Q. I understand that. You had to say  
13 yes or no?

14 MS. RUDICH: Don't interrupt,  
15 please, she was in the middle of an answer.

16 MR. HEMMENDINGER: Well she was in  
17 the middle of not answering, actually.

18 MS. RUDICH: Please don't  
19 interrupt. She was in the middle responding to  
20 your question whether you like the answer or not,  
21 she was responding. Please don't interrupt her.

22 A. I would look at medicals and based on  
23 what the doctor's information what they gave us,  
24 I would put recommended pierce the threshold  
25 based on limitations on the threshold.

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2 Q. Okay. Let's match up something. Can  
3 you go to the hard copy file. This is the green  
4 folder. Okay?

5 A. Okay.

6 Q. On the right-hand stack of pages a  
7 couple pages down from the top for page 8. This  
8 is the claims evaluation short form, am I  
9 correct?

10 A. Yes.

11 MS KOROLEVA: What Bates number is  
12 that?

13 MR. HEMMENDINGER: It is 80.

14 Q. This contains the same language that  
15 you input that we were just looking at. At the  
16 bottom it says "Recommended pierce the threshold  
17 based on limitations more than 90 days from the  
18 date of loss." Correct?

19 A. This rolls on to the A Log.

20 Q. Right, so when you put this -- when  
21 you wrote in the A Log what we see on page 8,  
22 that gets output into this form?

23 A. No, I write it on CIQ and gets rolled  
24 into A Log.

25 Q. And it rolls into this form?



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2 A. To what form? This is CIQ.

3 Q. I'm talking about document 80, the  
4 claims evaluation short form?

5 A. This is CIQ.

6 Q. So this piece of paper is something  
7 which is output by Claims IQ?

8 A. It is in Claims IQ and then we make a  
9 copy of it and we take the copy to our  
10 supervisor.

11 Q. But it is the exact same entry, we  
12 could even see limitations --

13 A. Yes.

14 Q. -- is misspelled the same way on  
15 both pieces of paper, right?

16 A. Yes. It is not misspelled, it's a  
17 typo.

18 Q. Okay. Let's go back to -- let's stay  
19 on the claims evaluation short form page 81. You  
20 got a range of liability figures, correct? This  
21 is 100 percent liability so it is not going to  
22 get any reduction. I'm sorry, it's a 50 percent  
23 liability now, right. I'm not trying to confuse  
24 you, this is the one that had to be changed?

25 A. Yes, that is what it says on here,

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2 50 percent.

3 Q. It has a -- the full value range is  
4 6,000 to 15,000 and the 50 percent value range is  
5 3,000 to 7,750; correct?

6 A. Right.

7 Q. Does this record here what  
8 authorization your supervisor gave you?

9 A. It says "okay to settle up to 10,000."

10 Q. And that was in this case above the  
11 range produced by Claims IQ; correct?

12 A. Yes.

13 Q. Do you recall the conversation that  
14 you had with your supervisor about this  
15 particular claim?

16 A. No.

17 Q. Now, let's go back to the A Logs. We  
18 have another Claims IQ note on page 16 at  
19 9/24/07, correct. 9/24/07 at page 16?

20 MS. RUDICH: 1:24 p.m.

21 MR. HEMMENDINGER: Yes, I'm sorry.

22 A. There is two, both of them.

23 Q. Well the one at the bottom.

24 A. Okay, that is a continuation on the  
25 other one.

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2 Q. 9/27/07 at 2:00 you made an entry.  
3 It says "Called attorney's office in reference to  
4 meds" and where I will try to supply some extra  
5 words and you tell me if I'm getting this  
6 correct. Called attorney in reference to meds  
7 and where did he see the threshold. Advised --  
8 he advise me that his system was down would  
9 review and get back to me. Reviewed the no-fault  
10 file which did not give much more than already  
11 written up. ER bill and time report and IME  
12 report obtain. Correct?

13 A. Yes.

14 Q. So let's go to page 15 and we know  
15 from previous -- we were looking at page 81 that  
16 you had 10,000 authorized on 11 -- you had  
17 \$10,000 in authorization on this file when you  
18 called the attorney; correct?

19 A. Yes, Carol Vilar gave me up to  
20 10,000.

21 Q. And then on January 15, '08 at 3:53  
22 you made an entry about your negotiation?

23 A. Yes.

24 Q. A Carmine the attorney, Carmine?

25 A. Yes.

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2 Q. Is that his first or last name?

3 A. I don't know if Carmine is the  
4 attorney or just a negotiator.

5 Q. What is a negotiator?

6 A. Someone at an attorney's office that  
7 I guess discuss the claims and they negotiate the  
8 claims. They make the calls. I don't know  
9 exactly what their job description is. That is  
10 what I assume they did.

11 Q. This is somebody at the attorney's  
12 office?

13 A. Yes.

14 Q. You "spoke with Carmine in reference  
15 to settling the file and he advised me he was  
16 looking for 25,000 based on claimant's  
17 injuries." Right. That is what it says?

18 A. Yes, that is what it says.

19 Q. And then you said "I advised Carmine  
20 that number one we are not accepting 100 percent  
21 of the liability based on the fact that the  
22 Claimant at the age of 9 should know better than  
23 crossing a street in the middle."

24 A. Yes.

25 Q. So that is the argument that you were

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2 making to try to sway the attorney; correct?

3 A. Yes. But that probably was after  
4 discussion with Miss Vilar on how I should go  
5 about handling the claim and the arguments that I  
6 should use.

7 Q. "The attorney advised that there was  
8 a witness that saw or policyholder run the red  
9 light and strike the pedestrian."

10 A. Yes.

11 Q. And you said that witness advised --  
12 "advise that the witness on police report is the  
13 claimant's mom."

14 A. Yes.

15 Q. Meaning what you're saying that you  
16 don't necessarily believe her because she is an  
17 interested party, correct?

18 A. Back then we really -- if they were  
19 related it held very little weight.

20 Q. So you're saying okay, I know you  
21 have a witness, but it is the mom and she is  
22 going -- if there is money involved she is going  
23 to benefit from it?

24 A. Yes, basically.

25 Q. "Advise attorney that the Claimant

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2 had all that amounts to a swollen knee." That is  
3 again you're saying come on, he has a swollen  
4 knee, right?

5 A. Yes, from medical reports it probably  
6 was just like an edema or something.

7 Q. "Advised that we offer \$7,000." That  
8 is a number that you chose to offer him, correct?

9 A. Yes, because as long as it was above  
10 the -- I had to negotiate between those ranges.

11 Q. Right, but you also had to be  
12 intelligent and how you select your opening  
13 figure, right?

14 A. It all depends, like with Miss Vilar  
15 sometimes she would actually tell me where I  
16 should start. But I mean in some cases I would  
17 use my discretion.

18 Q. Because you knew these attorneys and  
19 had dealt with them before, correct?

20 A. I didn't -- at this point I probably  
21 didn't deal with them. I don't know if I dealt  
22 with Carmine before.

23 Q. You dealt with a lot of attorneys on  
24 a repeat basis, am I correct about that?

25 A. I dealt with some of them on a basis,

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2 I had some claims with some of them over and over  
3 again, yes.

4 Q. And part of -- part of the technique  
5 of negotiation is trying to figure out what the  
6 right starting point is and you don't want to be  
7 too low and piss them off and you don't want to  
8 be too high and send the wrong message, right?

9 MS. RUDICH: Objection, vague.  
10 Pissed off?

11 MR. HEMMENDINGER: Okay, that is  
12 your objection.

13 Q. Do you understand what it means?

14 A. What, pissed off?

15 Q. Yes.

16 A. Get them upset with you.

17 Q. Yes, okay.

18 A. Negotiating was a job that I did.

19 Q. With -- have?

20 MS. RUDICH: Let her finish.

21 MR. HEMMENDINGER: Okay.

22 A. It was a discussion -- you know with  
23 Miss Vilar, specially, she was a good  
24 supervisor. She would give you negotiation  
25 strategies. So we would sit down and she would

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2 say oh, you should -- this is an argument that  
3 you should use. You might want to go in this  
4 direction.

5 Q. But I'm going to go back --

6 A. You should start here at this point.  
7 6,000 might be too low and you should start at  
8 7,000.

9 Q. But if I go back to Deposition  
10 Exhibit 2, page 181, that is where you wrote on  
11 one of your evaluations, "I believe that the  
12 class has "'made me in attuned personable and a  
13 fair negotiator.'" Being an attuned negotiator is  
14 what you're putting to work here when you were  
15 negotiating this settlement?

16 A. That was back in 2009 and this is  
17 2007. At that point CIQ and how we were handling  
18 it in 2007 was different than it was in 2009.  
19 2009 we were told that we had to start at the  
20 lowest range and work our way up. When I was  
21 doing it with Miss Vilar and she would give you  
22 an amount and basically she would tell you kind  
23 of where you should start. You didn't have to  
24 start at 6,000. I could start higher. So it was  
25 a little different. So if the \$7,000 -- I mean I



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2 could -- I started at the \$7,000. I mean I could  
3 have started at the 6,000.

4 Q. He said advised -- you're negotiation  
5 range if we look at page 81 is 3,000 to 7,750 and  
6 then your supervisor upped it to 10; correct?

7 A. Well, my negotiating range -- the  
8 50 percent then it would be cut in half.

9 Q. That is the cut in half?

10 A. Where are we?

11 Q. Go back to page 81. That is where  
12 you got your authorization, right?

13 A. Okay, but that is the 50 percent, the  
14 3,000?

15 Q. Right. And that is what the basis of  
16 your negotiation was, the 50 percent; correct?

17 A. Yes.

18 Q. So you could have started as low as  
19 \$3,000 and still be within the range, right?

20 A. Yes.

21 Q. Let's go back to page 15, please.  
22 You "offered 7, attorney advised 7 will not do  
23 it, we will go back to Claimant's mom and discuss  
24 and get back to you." Correct?

25 A. Yes.

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2 Q. On page 14 at 1/29/08 at 1:13.

3 A. Page 14?

4 Q. Yes. This is little thing. You're  
5 having to call the attorney to get him to talk  
6 about the case. "Call the attorney's office left  
7 message for call back"?

8 A. Yes.

9 Q. On the next page, page 3 is where you  
10 actually talk to him; correct?

11 A. Yes.

12 Q. At 2:25 on 2/19/08.

13 A. Yes.

14 Q. So you get him on the phone and it  
15 says "Spoke with Carmine in attorney's office and  
16 advise that he will be willing to come off his  
17 initial demand to 20,000."

18 A. Yes.

19 Q. And he advised you that "I will come  
20 off 25 to 20" and --

21 A. Yes.

22 Q. And you say "Advised Claimant had  
23 swollen knee and he was partially responsible for  
24 his injuries crossing in between two parked  
25 cars."

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2 A. Yes.

3 Q. He says "the adverse," meaning that  
4 is the Claimant, right "would lower his demand"?

5 A. No, the attorney advised.

6 Q. "The attorney advised that he would  
7 lower his demand to 15 K to settle the file  
8 today." Correct?

9 A. Yes.

10 Q. And you said, "10,000 would be my  
11 final offer." Correct?

12 A. Yes.

13 Q. And you chose to -- you didn't --  
14 your last offer had been 7; correct?

15 A. Yes.

16 Q. So you didn't offer 8 or 9, you  
17 offered 10?

18 A. Yes, I did. But I shouldn't have  
19 done that. We are supposed to go up in  
20 increments.

21 Q. You said "he requested that I take to  
22 be reconferenced." Correct?

23 A. Yes, that I should go back to my  
24 supervisor.

25 Q. He said, "Get more money" and you

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2 said "I advise him to take my offer." He is  
3 saying to you go back to your supervisor and get  
4 more money and you're telling him go to your  
5 client and tell him to accept my 10?

6 A. I told him to take the offer to his  
7 client.

8 Q. And you told him why you thought it  
9 was a good offer.

10 A. Because of a swollen knee.

11 Q. And the fact that it was partially  
12 his fault.

13 A. Right.

14 Q. And then on page 12 at 3/6/08 -- let  
15 me see, are you with me, do you see where I'm at?

16 A. 3/6/08 at.

17 Q. 5:25. The top of the page, close to  
18 the top of the page.

19 A. Okay. 5:27 you mean?

20 Q. Yes. I don't know what I said but  
21 that is what I meant?

22 MS. RUDICH: You said 5:25.

23 Q. What does RVM mean?

24 A. Return voicemail.

25 Q. That means you called him back?

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2 A. Yes.

3 Q. And you apparently spoke to him?

4 A. Yes.

5 Q. And he was looking for 15 at that  
6 point, that was the same as the last time that  
7 you spoke to him?

8 A. Yes.

9 Q. And you said, I advised him I didn't  
10 have -- I advised him to go back -- I'm sorry,  
11 "advise did not have." You're telling him I  
12 don't have 15, right?

13 A. Yes, yes. I said I advised did not  
14 have, advised did go back to reconference.

15 Q. Right, at that point you were sort of  
16 blowing smoke at him because you did have more  
17 money, didn't you?

18 A. What do you mean?

19 Q. Go back to 81, please?

20 A. Okay.

21 Q. Well, I apologize, let me withdraw  
22 what I said before. On 2/20/08 you had gone back  
23 to your supervisor and said I need more money on  
24 this file?

25 A. On where?

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2 Q. 2/20/08. Look at the handwritten  
3 notes on document 81?

4 A. 2/20/08 I went back, yes.

5 Q. And you asked for more money?

6 A. Yes.

7 Q. And you got 12-5?

8 A. Yes, she gave me 12,500.

9 Q. Was that a figure that you asked for?

10 A. That is the figure that she gave me.

11 Q. I understand. I want to know whether  
12 you asked for that amount?

13 A. No, I probably would have asked for  
14 the 15. But no, that is the amount that she gave  
15 me.

16 Q. Now you're talking to him on 3/6.  
17 This is after you got your increased  
18 authorization; correct?

19 A. Right. After she gave me the 12-5.

20 Q. And told him he asked for 15 and you  
21 said you did not have a -- you told him "I did go  
22 back to reconference, did get a little more money  
23 on the file." Correct?

24 A. Yes.

25 Q. And then you advised can do 12,

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2 right?

3 A. Yes.

4 Q. And that -- you were holding back  
5 \$500 at that point?

6 A. Yes. Because we were always told not  
7 to give up all the money at once.

8 Q. Then he -- I'm not sure what the next  
9 thing says, he asked to do 13-5?

10 A. Yes.

11 Q. And you at that point said, "I  
12 advised 12-5 is my final offer." Correct?

13 A. Yes.

14 Q. And he said I will take it to my  
15 client and get back to you and you said to him,  
16 that is -- that really is my final offer?

17 A. That was my final offer, yes.

18 Q. Now, above that on the top of the  
19 page where the date appears on page 11 it says  
20 3/25/08 at 10:35. It says "return voicemail to  
21 attorney's office." What was going on there?

22 MS. RUDICH: Wait, where are you  
23 looking?

24 MR. HEMMENDINGER: Bottom of  
25 page 11, top of page 12.

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2 MS. RUDICH: 3/28.

3 THE WITNESS: 3/28?

4 MR. HEMMENDINGER: No, it is THE  
5 bottom of the page 3/25.

6 MS. RUDICH: No, it says 3/28.

7 MR. HEMMENDINGER: No, 3/25.

8 Q. Return voicemail, you had to tell him  
9 again it was 12-5?

10 A. He must have called me because I'm  
11 returning a phone call and advised him 12-5 was  
12 my offer.

13 Q. So did he call back and try to get  
14 some more out of you?

15 A. I don't know.

16 Q. But you had to remake the same offer;  
17 correct?

18 A. I don't know if I was just stating  
19 the same offer. I just left a message for him  
20 and he called me back and I called him back  
21 again.

22 Q. Go to page 11, please, at 3/31/08 at  
23 3:58.

24 A. Okay.

25 Q. Who is Sebastian?



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2 A. I don't know who Sebastian is. I  
3 guess he is someone at the attorney's office.  
4 That is one that Keith Brown spoke do.

5 Q. Who is Keith Brown?

6 A. He is another examiner.

7 Q. On 3/31 when he called were you at  
8 work?

9 A. I don't recall whether I was there or  
10 not.

11 Q. You could have been off work for any  
12 number of reasons?

13 A. Absolutely.

14 Q. And in that case somebody else in  
15 your department would take a message for you?

16 A. Yes.

17 Q. And this is the way that the message  
18 would be recorded?

19 A. Yes.

20 Q. Then on 4/3/08, same page, 10:16  
21 there is an entry by you. You called Sebastian  
22 back?

23 A. Yes.

24 Q. In reference to settling the matter  
25 and advised him that "12-5 was my final offer and

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2 I would not be able to get any more." Correct?

3 A. Yes.

4 Q. And he advised will take back to the  
5 attorney to discuss?

6 A. Yes.

7 Q. It sounds like they sent somebody  
8 else to get more money and you have to keep  
9 telling them that it is 12-5?

10 A. Sebastian is probably somebody that  
11 works at the attorney's office also. A  
12 negotiator also. So he may be an attorney, I'm  
13 not sure.

14 Q. On page 10 at 4/18/08 at 2:44 there  
15 is another entry by you and it says, "called and  
16 spoke with the attorney advised he sent out the  
17 release to client awaiting back." Am I correct  
18 in gathering from that that he ultimately  
19 accepted your offer of 12-5?

20 A. Yes.

21 Q. By the way, what you're settling  
22 there is what? It is not the entire claim,  
23 correct? The 12-5 doesn't represent all the  
24 money that that individual is going to get, does  
25 it?

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2 A. I'm not clear on what you mean.

3 Q. The 12-5, does that include the  
4 doctor's bills?

5 A. You mean as far as the no-fault is  
6 concerned?

7 Q. As far as Geico -- as far as payments  
8 that Geico makes on this claim, does the 12-5  
9 include the doctor's bills?

10 A. I couldn't answer that question. I  
11 mean if the no-fault was cut off.

12 Q. Let me ask you what you're settling  
13 in this case is the claim for pain and suffering?

14 A. That is all I'm settling. Anything  
15 else that has to do with any other portion of the  
16 file, that wouldn't be my concern.

17 Q. You're only settling the pain and  
18 suffering portion of it?

19 A. In this case, yes.

20 Q. Let's go to the Claims IQ screens on  
21 this case which begins with number 40. I would  
22 like you to flip over to page 47 and you can see  
23 where there is an entry for typing for an entry  
24 that has been made by you, it says 50 percent  
25 liability?

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2 A. Yes.

3 Q. And then on the next page, 48, you  
4 have the breaches by in this case Nicholas the  
5 pedestrian and Claudette the driver, correct?

6 A. Yes.

7 Q. And then on page 50 you have what  
8 Claims IQ -- I'm sorry, 48, you have to -- in  
9 terms of the first one, observe right of way, you  
10 decided you put in that each of them breached the  
11 duty to observe the right of way and had a medium  
12 approximate cause for the accident; correct?

13 A. The breaches were absolutely done and  
14 put in. But sometimes, specially in the  
15 beginning at this point, if you needed to -- how  
16 could I say this. Yes, the breaches were put in.

17 Q. Then on page 50 based on your input  
18 of the breaches, the computer is going to give  
19 you a range of liability figures for Claudette  
20 the insured; correct?

21 A. They give you a liability -- yes, it  
22 gives you the liability.

23 Q. In this case it is reported as 44 to  
24 64 percent.

25 A. Right.

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2 Q. And that is a spread of 20 points,  
3 right?

4 A. Yes.

5 Q. And then you chose the figure and  
6 entered 50 percent?

7 A. That was, yes, the figure of  
8 50 percent.

9 Q. If you had split the difference what  
10 would the figure have been?

11 A. What do you mean split the  
12 difference?

13 Q. What is halfway between 44 and 64.  
14 It is 54, right?

15 A. What is that, 64. 54 and 44. So  
16 that is 49. Between 54 -- is that 64 or 54?

17 Q. It is 64.

18 A. Okay, then 54. But 50, you know --

19 Q. I will move on.

20 THE VIDEOGRAPHER: This marks the  
21 end of tape number 2 in the deposition of Miss  
22 Candace Harper and we are going off the record  
23 the time is 5:06 p.m.

24 (Recess taken.)

25 THE VIDEOGRAPHER: This marks the

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2 beginning of tape number 3 in the deposition of  
3 Miss Candace Harper and we are back on the  
4 record. The time is 5:14 p.m.

5 BY MR. HEMMENDINGER:

6 Q. To save a little time, Miss Harper,  
7 we were going through the Claims IQ screens and a  
8 lot of screens around choices you would have to  
9 make are the same as in the previous file that we  
10 discussed, correct?

11 A. This is one 2007. So I think Claims  
12 IQ did change a little bit, but basically it was  
13 the same.

14 Q. Let me ask you about one thing here.

15 A. Sure.

16 Q. If you go to document 81?

17 A. Okay.

18 Q. And then go to document 62 and you  
19 can have them both in front of you?

20 A. 81 and 62?

21 Q. Yes. 81 is in the folder and 62 is  
22 part of the Claims IQ package.

23 A. Okay.

24 Q. On page 62 I see where full value of  
25 the claim is estimated by Claims IQ to be 6,000

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2 to 15-5; correct?

3 A. That is what it says, yes.

4 Q. And that same figure appears in the  
5 printed out production of page 81?

6 A. Yes.

7 Q. And then on the next page Claims IQ  
8 cuts those figures -- gives a range from  
9 50 percent to 75 percent of what the high and the  
10 low would be. 50 percent of the low to 75  
11 percent of the high. Is that what it is doing?

12 A. Yes.

13 Q. So then it reports a negotiation  
14 range of 3,000 to \$11,625, am I correct?

15 A. Yes.

16 Q. But the figure that ended up being  
17 discussed with your supervisor was \$10,000  
18 initially; correct?

19 A. Well we didn't have a discussion on  
20 10,000. That is what she felt the file was worth  
21 up to.

22 Q. What is the standard operating  
23 procedure or the instructions that are given to  
24 examiners with respect to documenting  
25 conversations about files?

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2 A. You're supposed to try to get  
3 everything into -- your conversations into the  
4 documents. Into the A Log.

5 Q. That's it for that file. Let's wrap  
6 that one up. I have another one for you.

7 MR. HEMMENDINGER: Mark this as  
8 Exhibit 5.

9 (Harper Exhibit 5 for  
10 identification, Claim file 1019.)

11 Q. On this one I'm not going to ask you  
12 the same -- all the same questions that I asked  
13 before. So we could save a little time. But, I  
14 want to ask you on page -- go to page 8 of the  
15 set of documents. This is exhibit -- so the  
16 record is clear, we are looking at Exhibit 5  
17 which is claim number 1019.

18 Are you with me, have you found 8  
19 yet?

20 A. Yes, I have.

21 Q. I would like to go to the entry that  
22 is on 11/13/07 at 8:12.

23 A. Okay.

24 Q. This entry says received TI, what  
25 does TI mean?



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A. That is an L.

Q. TL.

A. Total loss paperwork.

Q. From?

A. From the adverse carrier.

Q. Is the adverse carrier Allstate?

A. Yes.

Q. What does the rest of that mean?

A. That means that I took that paperwork that they sent me and I sent it to the adjusters in fair and reasonable who would review it.

Q. "Received total loss paperwork from adverse carrier Allstate submitted to" failure what was it, --

A. Fair and reasonable.

Q. "for review"?

A. They review the paperwork and put a value to it.

Q. Now, two entries up, 11/14/07 at 1:18 there is another entry concerning this.

A. Yes.

Q. It says "returned voice message." Is that voice message?

A. Yes, yes. I returned a voice message

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2 to the adverse carrier.

3 Q. In reference to subrogation  
4 paperwork?

5 A. Yes.

6 Q. Called adverse carrier advised it has  
7 been received, advised paid 10.

8 A. PD 10, that means there is only  
9 property damage is only \$10,000. That the person  
10 has on their policy.

11 Q. And he advised to send release along  
12 with affidavit of coverages?

13 A. Yes.

14 Q. So, can you explain to me what is  
15 going on here?

16 A. It looks like there was an accident  
17 and our policyholder held some liability in it.  
18 The estimate that the adverse carrier gave was  
19 probably over the \$10,000. So I was just  
20 advising them that that is what the policy --  
21 that is what the policyholder had on their  
22 policy.

23 Q. Was it within your power to pay the  
24 \$10,000 that they had to the subrogation carrier?

25 A. What do you mean by -- I didn't have

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2 power, I didn't have power.

3 Q. Your authority, did you have  
4 authority to pay the \$10,000?

5 A. If the fair and reasonable department  
6 basically said that -- if it were over the 10,000  
7 or if it were 10,000 then I would pay it.

8 Q. Were there circumstances where you  
9 could deny a subrogation claim?

10 A. Were there situations where I would  
11 deny a subrogation claim?

12 Q. Yes.

13 A. Only if we didn't have liability.

14 Q. So if a claim came in from the  
15 adverse carrier and you had determined that  
16 Geico's insured wasn't liable, you would tell the  
17 adverse carrier that you weren't going to pay it,  
18 correct?

19 MS. RUDICH: Objection.

20 A. On claims like these, sometimes they  
21 would be transferred up to me from a previous  
22 examiner, a PD examiner who determined the  
23 liability. If it is liability -- if we didn't  
24 have liability, it wouldn't -- we won't pay  
25 anything.

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2 Q. Well, is the liability determination  
3 that governs the subrogation claim the same  
4 liability determination that you're making with  
5 respect to the 0 to 100 percent scale?

6 MS. RUDICH: Objection, are you  
7 talking about in this claim or generally?

8 MR. HEMMENDINGER: Generally.

9 A. Say that one more time, I'm sorry.

10 Q. Let's say you remember there was a  
11 claim where there was 33 percent liability?

12 A. Yes.

13 Q. And you changed it to 50?

14 A. Right.

15 Q. Would that same percentage figure  
16 apply to a subrogation claim?

17 A. Yes, I guess so.

18 Q. So if you determined the figure to be  
19 zero, you would deny subrogation, the claim?

20 MS. RUDICH: Objection, you mean she  
21 determined it or --

22 MR. HEMMENDINGER: Please.

23 MS. RUDICH: I'm objecting to form.

24 Q. If you had entered 33 -- if you  
25 entered zero liability, you would deny the

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2 subrogation claim; correct?

3 A. If it were -- after you did your  
4 whole thing with Claims IQ, if it came up with  
5 zero percent, it would be zero percent and there  
6 would be nothing paid on the claim because there  
7 would no liability.

8 Q. Who would advise the adverse carrier  
9 that you were denying the subrogation claim?

10 A. That was part of the every examiner  
11 to contact the adverse and tell them that you're  
12 not paying them anything.

13 Q. In this case if you go to page 7 at  
14 12/12/07 at 8:15 you see the note?

15 A. 12/7 --

16 Q. Page 7, 12/12/07.

17 A. 8:15 a.m.

18 Q. You made a note to the file that you  
19 were going to send to Allstate a release for the  
20 \$10,000?

21 A. Yes.

22 Q. Which was paid?

23 A. Yes, I guess so.

24 Q. Now, can you go ahead with me to page 3,  
25 please. At the bottom of the page 5/19/08. 2:27

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2 p.m.

3 A. Yes.

4 Q. And let me see if I can decipher this  
5 correctly. It says, "Spoke with attorney in  
6 reference to this claim. He feels threshold due  
7 to scarring." That is what he said, right?

8 A. Yes.

9 Q. And you said, "I would need to see  
10 current pictures of the scars in order to review  
11 properly."

12 MS. RUDICH: Objection, that is not  
13 what it says.

14 MR. HEMMENDINGER: Well let the  
15 witness tell us what it says.

16 MS. RUDICH: You just read it -- you  
17 just read to -- okay, objection.

18 MR. HEMMENDINGER: I don't  
19 understand the objection.

20 MS. RUDICH: You said I will need.  
21 It is adverse.

22 MR. HEMMENDINGER: Advised.

23 MS. RUDICH: Well, we don't know  
24 what that means.

25 MR. HEMMENDINGER: Let's ask the

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2 witness.

3 Q. What does that mean?

4 A. It means, it means that I will advise  
5 the attorney will need to see the current  
6 pictures.

7 Q. You advised the attorney that you  
8 wanted to see the pictures?

9 A. That I would need the pictures. We  
10 would need the pictures in order to review the  
11 claim properly.

12 Q. Because she is claiming I was  
13 disfigured in this accident, I have these scars,  
14 and you said let me see some pictures of these  
15 scars?

16 A. Right. If there is scarring they  
17 would have to send pictures. Because I had two  
18 scar cases where Claimants had to come in and  
19 both my supervisor and I went down to -- Miss  
20 Vilar and I both went down so she could get a  
21 look at the scars also. So it was something that  
22 you would actually review.

23 Q. So, let's just go fast forward here,  
24 let's go to the top page here?

25 A. The top of the same page?

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2 Q. Let's go to page 1 and let's get out  
3 page 132 of the folder. Let's go to page 131,  
4 the page in front of it. Page 131 is the claims  
5 evaluation short form?

6 A. Yes.

7 Q. And we have the text that you input  
8 and it says at the bottom, "you have the  
9 pictures, pictures dated 2/2/09, minimal scarring  
10 to her leg will submit for conference"?

11 A. Yes.

12 Q. In the next page reflects that you  
13 had settlement authorization of \$8,000; is that  
14 correct?

15 A. Yes.

16 Q. And then -- that was on 2/24/09?

17 A. Yes.

18 Q. Now, go to page 1.

19 A. Of where?

20 Q. In the A Log, the top page of the A  
21 Log file?

22 A. Okay.

23 Q. At 2/25/09, 5 p.m. that is the next  
24 day, after you got the settlement authorization  
25 you called the attorney's office, am I correct?



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A. Okay, I'm sorry, where are we?

Q. Page 1.

A. Page 1.

Q. Right in the middle of the page, 2 --

A. 2/25?

Q. Right.

A. 5:15?

Q. 5:17.

A. 5:17, I'm sorry.

Q. You called the attorney's office and he said "heavy damages to her vehicle and the only reason she did not have treatment was due to the fact that she was pregnant." Am I reading that right?

A. Yes.

Q. His demand is \$15,000; correct?

A. Yes.

Q. And you said, my initial offer would be 5,000; correct?

A. Yes.

Q. Which is a number that you -- that's where you decided to start?

A. The funny thing on this page here it doesn't seem to have a range on it, but there

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2 should be a range on it, but I don't know why  
3 there is not a range on it. I would have to  
4 start from something that my supervisor and I  
5 agreed on. I wouldn't be able to just pick a  
6 number out of the air like that. So it had to be  
7 a number that we agreed on. There would have to  
8 be a low and there would have to be a high. It  
9 would have to be a range. So I don't understand  
10 why there was not a range there.

11 Q. Are you saying that you recall the  
12 conversation that you had with Marlene about this  
13 particular claim?

14 A. No, I'm not saying that I recall it.  
15 I'm saying that when we are conferencing these  
16 claims, that when we -- there is a low number  
17 that we are supposed to start off with and there  
18 is a high number that we can't go over. And your  
19 supervisor gives you the money and that is where  
20 you're supposed to start.

21 If I started at 5,000 that was a  
22 number that I didn't just pick out. That had to  
23 be -- it had to be some kind of discussion or it  
24 would have been on Claims IQ.

25 Q. Or it would have been within the

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2 range; correct?

3 A. Well, I don't know because there is  
4 no range. I would assume there would be range.  
5 I don't know. There would be a range.

6 Q. So let's go back to Exhibit 1. He  
7 states "he could not do it for that much and  
8 states if they were to trial the jury would say  
9 that the Claimant was pregnant and had multiple  
10 abrasions to her body." That is what he told  
11 you, right?

12 A. Yes.

13 Q. And you said, "I stated to the  
14 attorney that the Claimant struck you're vehicle  
15 and she had to be going at a pretty fast pace to  
16 incur that kind of damage." That is your  
17 argument?

18 A. Right.

19 Q. "Attorney then lower his demand to  
20 12-5." Correct?

21 A. Yes.

22 Q. And you then said, "I will give you  
23 advise 7 to settle" -- I not sure what that  
24 means, to settle?

25 A. The file.

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2 Q. The file. And he then stated that  
3 "he would of have to split the difference and  
4 settle for 9750." Correct?

5 A. Yes.

6 Q. And you said "I will have to review  
7 and get back to him."

8 A. Yes.

9 Q. Could you have said to him at that  
10 point my authorization is for 8 and that is all  
11 that I have to offer you like you did in the  
12 previous file that we discussed?

13 A. You mean the 12, I think it was 12-5?

14 Q. Yes.

15 A. That is all I had on the file and I  
16 had already gone back. I wasn't going to get any  
17 more money on that claim.

18 Q. On this particular file you only had 8;  
19 correct?

20 A. I only had 8.

21 Q. You could have said to him, I'm not  
22 going to -- I don't want to go back and  
23 reconference it, 8 is my bottom line. You did  
24 that on another file, didn't you?

25 MS. RUDICH: Objection,

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2 hypothetical. Could have. She could have done  
3 anything.

4 MR. HEMMENDINGER: That's true, I'm  
5 asking.

6 MS. RUDICH: Well, she could have  
7 walked out of the office at that moment. She  
8 could have gone to the bathroom. She could have  
9 done anything. When you're talking about  
10 hypotheticals it is objectionable, Eric.

11 MS. LESTRADE: I don't think so.

12 MS. RUDICH: It is.

13 Q. Have you ever said to -- didn't we  
14 see an example in another file of you're saying  
15 to the attorney, I don't have any more  
16 authorization, this is all the authorization that  
17 I have?

18 A. I believe that was on the file where  
19 that was the only authorization that I had.

20 Q. And at this point in this discussion  
21 on page 1 of this claim, page 10, \$8000 was all  
22 the money that you had?

23 MS. RUDICH: Objection, no  
24 foundation. When was it established that 8,000  
25 was all she had. It was not established.

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2 MR. HEMMENDINGER: Fran, I just  
3 established it.

4 MS. RUDICH: She said there was no  
5 range.

6 MR. HEMMENDINGER: It says right on  
7 document 132, please read it.

8 MS. RUDICH: You don't know if it is  
9 on that date. At that time. What time is this  
10 put down. You have to set the -- I have been  
11 letting you go today with these objectionable  
12 questions where there is no foundation. Ask her  
13 if she had 8,000 during that telephone call.

14 MR. HEMMENDINGER: We already know  
15 she did.

16 Q. Did you have \$8,000 at the time that  
17 you made that telephone call?

18 A. \$8,000, yes.

19 MS. RUDICH: There, that is a proper  
20 question.

21 MR. HEMMENDINGER: Well, if you want  
22 to look back at the transcript when we are  
23 finished when you get the transcript you can look  
24 back and you can see that I established it about  
25 three questions ago.

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2 Q. So at the time that you're having  
3 this conversation you have \$8,000, right?

4 A. Yes.

5 Q. And one of the things that a  
6 negotiator, a skilled negotiator like you could  
7 say is, that is my bottom line, correct?

8 A. My job was to I had to move the  
9 file. So, whether I -- I have to move the file  
10 and you get credit when you move the file. So I  
11 knew that I had to go back to my supervisor and  
12 get more money.

13 Q. And you knew based on your experience  
14 that this attorney wasn't going to take your 8,  
15 so you would have to go back and ask for more?

16 A. My experience with this particular  
17 attorney? I don't know who the attorney is on  
18 the file.

19 Q. Let me ask you a different question.  
20 You offered on 2/25 you offered 7, correct?

21 A. Yes.

22 Q. And he says that won't do it, we  
23 could split the difference at 9750; correct?

24 A. Yes.

25 Q. You had \$8,000 in authorization;

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2 correct?

3 A. Yes.

4 Q. So you chose not to use the \$8,000 at  
5 that time, correct?

6 A. On 2/25?

7 Q. Yes.

8 A. No, because he wanted 9750.

9 Q. So you evaluated the situation and  
10 decided putting out your \$8,000 wasn't going to  
11 be a good negotiating move at that point?

12 A. I thought I could get more money if I  
13 went back to the supervisor, that I could get  
14 more money on the file so that is what I did to  
15 settle the file.

16 Q. Let me ask you a question. Why  
17 didn't you offer the full extent of your  
18 authorization before going back for more?

19 A. I probably should have.

20 Q. So you went back to the supervisor  
21 and you said to the supervisor, 8 is not going to  
22 cut it, we need 9750, correct?

23 A. Yes.

24 Q. And she gave you 9750?

25 A. Yes, she did.



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2 Q. And you settled the case?

3 A. Yes, I believe so.

4 Q. That's it for that file. The next  
5 file is 1185.

6 MR. HEMMENDINGER: Mark this as  
7 Exhibit 6.

8 (Harper Exhibit 6 for  
9 identification, Claim file 1185.)

10 Q. We have handed you the next file  
11 which is Deposition Exhibit 6 which is the file  
12 number 1185.

13 MR. HEMMENDINGER: Counsel, do you  
14 have it in front of you?

15 Q. Let me ask you, who is JP  
16 Chandonnet? C-h-a-n-d-o-n-n-e-t.

17 MS. RUDICH: Are you reading from a  
18 specific page?

19 MR. HEMMENDINGER: Yes. Page 28.

20 A. JP Chandonnet I believe is -- she is  
21 an examiner or he is an examiner. He is an  
22 examiner, JP.

23 Q. Same job title as you?

24 A. Yes.

25 Q. Were there times when you were off

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2 work where JP Chandonnet would cover your files  
3 for you? I'm not saying you in particular.  
4 Everybody did that for every one else, right?

5 A. I think there was a period of time  
6 during this -- I think when JP first started  
7 where I was out of work for a few weeks and I  
8 think he covered my desk, but I'm not sure I  
9 wasn't there. I believe he was handling my  
10 files.

11 Q. I'm looking at the entry date  
12 August 14th, '08, was that a period of time when  
13 you were off work?

14 A. Yes, I believe so.

15 Q. How long were you off work?

16 A. From July until September. For  
17 medical reasons.

18 Q. So the files don't standstill when  
19 somebody is out, right, other people work the  
20 files?

21 A. Yes.

22 Q. If JP Chandonnet make entries on  
23 8/14/08 he would be doing work that you would be  
24 doing if you were there, correct?

25 MS. RUDICH: Objection.

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2 Q. He is substituting for you on this  
3 case?

4 A. I can't speak to JP's work, but as a  
5 substitute he would be doing the same exact --  
6 working the file the same exact way, possibly,  
7 yes. In general you would want uniformity, but I  
8 don't know. I can't speak to JP's work what he  
9 did. I wasn't there.

10 Q. So you really only know the way that  
11 you work yourself?

12 A. I mean -- what do you mean by that  
13 question?

14 Q. When it comes to knowing how people  
15 did their job, the only person that you're in a  
16 position to talk about is yourself, is that what  
17 you're saying?

18 MS. RUDICH: Objection. Am I  
19 coaching, I'm not coaching. I'm objecting. If  
20 you have a comment say it out loud.

21 MS. LESTRADE: I have no comment.

22 A. What I'm saying is I don't know what  
23 JP did on this file. On this particular file. I  
24 don't know. Can I tell you what other examiners  
25 are doing, I only know from what my job is, what

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2 I did.

3 Q. That is what I was trying to figure  
4 out, that's all.

5 A. I would assume that they are doing  
6 the same thing. JP was new when he started to  
7 this department, at that particular time.

8 Q. Can you look at the entry on 10/24,  
9 please, on page 26?

10 A. You said 10/24?

11 Q. Yes, and I was wrong as unusual.  
12 9/24/08.

13 A. What time?

14 Q. 9:02. So it says here "spoke with  
15 Jeanelle at AC" that means adverse carrier?

16 A. Yes.

17 Q. "In reference to the liability on  
18 this case. She wants to settle the file." That  
19 what it says?

20 A. Yes.

21 Q. "Comparative negligence to 15/85."  
22 Who is saying that, you or her?

23 A. That is what she is saying.

24 Q. Who did she think is 15 and who did  
25 she think is 85.

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2 A. I would have to look at the  
3 description, but it is probably -- what the  
4 accident description is. But it is probably --  
5 she wants us to accept 15. So we would be 15  
6 percent.

7 Q. Then it says, "Advised her their  
8 argument is that their insured had already passed  
9 a lane of traffic when they collided." Is that  
10 what it says?

11 A. Okay, yes.

12 Q. And you responded, "I advised her  
13 that there is only -- there is one lane for  
14 traffic and a turning lane."

15 A. Yes.

16 Q. For their insured in a turning lane  
17 and mine in a travel lane, therefore -- I'm sorry  
18 "therefore insured in a turning lane and mine in  
19 a travel lane." That is what you told her?

20 A. Yes.

21 Q. And the last thing says "Advised my  
22 insured did nothing wrong." Correct?

23 A. Yes.

24 Q. And "advised let it go to arbitration."

25 A. Right, because she probably said she

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2 would go -- it would go to Arb.

3 Q. Would this be a subrogation claim?

4 A. It is only a subrogation claim if we  
5 pay something out on our insured.

6 Q. Would it be a subrogation claim as  
7 far as Jeanelle is concerned?

8 A. You mean for the adverse carrier,  
9 Jeanelle?

10 Q. Yes.

11 A. She might be the Arb person.

12 Q. Is this claim from another insurance  
13 company against Geico; correct?

14 A. I'm not sure if they have a claim.  
15 Obviously they do because they said they were  
16 going to Arb, yes.

17 Q. And you denied it; correct?

18 A. I don't know if I ultimately denied  
19 it or not until I read it.

20 Q. Going to page 14. Do you see that  
21 there is a -- at the top of the page at 3/14/08  
22 at 1:18 p.m. there is an entry by you concerning  
23 Marie, policyholder Marie?

24 A. Yes, I see it.

25 Q. And what you wrote was "As of the

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2 last renewal date was the spousal coverage  
3 endorsement sent to the insured and was it  
4 returned signed and accepted or declined for the  
5 spousal coverage." Correct?

6 A. Yes. I was instructed to do that.

7 Q. Who did you send that to?

8 A. I sent it to that was an underwriting  
9 referral.

10 Q. Is there any -- can you show me in  
11 the record where you were instructed to do that?

12 A. All instructions are not in A Log. I  
13 don't think it is in here, but I would have been  
14 instructed to do so.

15 Q. Let me ask you to go to document 150  
16 which is the hard copy file on the left-hand side  
17 of the page. This is a coverage worksheet, am I  
18 correct?

19 A. Yes.

20 Q. It says summary of underwriting  
21 decision; correct?

22 A. Right.

23 Q. And did you type that in?

24 A. Yes, we have to fill in all of those  
25 boxes.

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2 Q. What you typed in was the spouse was  
3 not covered?

4 A. Where did I type that in?

5 Q. "Therefore no spousal coverage for  
6 loss date."

7 A. Okay, yes.

8 Q. Below that it says "in summary of  
9 insured's version" --

10 A. That is the underwriting decision.  
11 That is from underwriting.

12 Q. Then it has some facts about  
13 accident, correct?

14 A. Yes.

15 Q. And it says "examiner's recommendation."

16 A. Yes.

17 Q. And did you type that in?

18 A. Yes, we have to type something in.

19 Q. You typed in "disclaim for no spousal  
20 coverage on the policy."

21 A. Yes, we have to type that in.

22 Q. Now, are there -- do you use that  
23 coverage worksheet for other types of coverage  
24 issues?

25 A. Yes.



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2 Q. That is all I have on this file. The  
3 last one is labeled confidential claims file 1012  
4 and we will mark it as exhibit --

5 MS. RUDICH: 1012.

6 MR. HEMMENDINGER: I apologize, I  
7 misspoke. It is marked 1010 but that is a  
8 mistake. The actual claim file is 1012. So  
9 let's correct it on the jacket like this. And  
10 mark it as Exhibit 7.

11 (Harper Exhibit 7 for  
12 identification, Claim file 1012.)

13 Q. I don't have much on this. You will  
14 agree with me that this is a file that you  
15 handled?

16 A. Yes, I see my entries, yes.

17 Q. In the A Log portion of it. Go to  
18 page 6, please. Page item -- 12/17/08. 9:23  
19 a.m. You see an entry by you --

20 MS. RUDICH: 12 what.

21 MR. HEMMENDINGER: 12/17?

22 A. Yes, I do. 9:23 a.m.?

23 Q. Yes. That refers to a doc 805. What  
24 is a doc 805?

25 A. A doc 805 letter is a state mandate

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2 letter that has to go out if a feature is still  
3 open. It's a system generated letter. I don't  
4 know exactly what it reads.

5 Q. Why did you enter no need for that?

6 A. Because the PD and the rental  
7 features were closed.

8 Q. Go to in this case flip in the other  
9 direction, go to page 7. This came at 11/24/08  
10 do you see the entry at 4:56 p.m.

11 A. I see that entry, yes.

12 Q. This says this file was transferred  
13 from Laura Gill to you, correct?

14 A. That is what it says.

15 Q. Who is Laura Gill?

16 A. I don't know.

17 Q. Can you described under what  
18 situations files would be transferred to you by  
19 another person?

20 A. If there were -- a transfer could  
21 come from -- if there was an attorney's letter on  
22 there. A letter of representation and it would  
23 be transferred over to me.

24 Q. That is all I have on that file. You  
25 can put the files aside now. I don't think we

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2 are going to go back to them.

3 You indicated that you had two  
4 supervisors; correct?

5 A. Yes.

6 Q. You had Marlene and Carol; correct?

7 A. Yes.

8 Q. When were you under Marlene's  
9 supervision, how many other people did she  
10 supervise, do you know?

11 A. Somewhere between six and eight.  
12 Somewhere in there, I'm trying to think.

13 Q. Do you know about Carol?

14 A. Probably about the same amount.

15 Q. I'm going to be jumping around, some  
16 sort of clean up questions so they are not  
17 necessary going to come in a particular order.

18 A. Sure.

19 Q. Where did you work before you worked  
20 with Geico?

21 A. Where?

22 Q. Yes.

23 A. Years ago I worked for Chase Bank.

24 Q. What did you do there?

25 A. I was a collection. I did

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2 collections.

3 Q. Can you describe your formal  
4 education to me?

5 A. I have a bachelor's degree in  
6 finance.

7 Q. From?

8 A. From Old Westbury.

9 Q. When did you obtain that?

10 A. '96.

11 Q. Have you gone to any further  
12 schooling not at Geico?

13 A. I started a master's program, but I  
14 only took one class.

15 Q. When was that?

16 A. I don't recall the year but it was  
17 after '96.

18 Q. What were you pursuing?

19 A. A master's in MBA.

20 Q. In?

21 A. Business administration.

22 Q. You're currently employed, correct?

23 A. Yes.

24 Q. When did you start working in your  
25 current job?

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2 A. In October, the end of October of  
3 2009. I don't remember the exact date.

4 Q. What kind work do you do?

5 A. I am an examiner. No-fault.

6 Q. For an insurance company?

7 A. Yes.

8 Q. I'm looking right now and I don't  
9 have copies to make for everybody, so I'm going  
10 to read this stuff and just ask you some  
11 questions. It will be fairly simple but these  
12 are your answers to interrogatories. You're  
13 familiar with them; correct?

14 A. Yes, I am.

15 Q. In number 6 you say "Plaintiff states  
16 that adjusters prepared damages estimates not  
17 those employees holding the position TCR 2."

18 A. I never -- yes, I never estimated  
19 damages.

20 Q. When you use the word damages in that  
21 are you referring to the auto damage portion?

22 A. Yes. Because the adjusters are the  
23 people that look at vehicles.

24 Q. And what you do is settle bodily  
25 injury claims, correct?

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2 MS. RUDICH: Objection, you can  
3 answer.

4 A. With the proper supervision, yes. I  
5 settle the bodily injury claims.

6 Q. Now, in your answer to interrogatory  
7 number 10 you write, "Subject to and without  
8 waiving this objection, Plaintiff states that she  
9 did not negotiate settlements." Do you recall  
10 giving that answer?

11 A. Well, what I --

12 Q. The only -- it's a yes or no  
13 question?

14 A. If that is -- that would be the  
15 answer.

16 Q. Would you like to see it?

17 A. No, I already saw the interrogatory.

18 Q. Knowing what we know now, do you  
19 think that is an accurate statement?

20 A. Well, I think it was misunderstood,  
21 the question. Because I myself negotiated with  
22 the help of, you know, my supervisor and things  
23 that we have to do as claims examiners.

24 Q. And then in interrogatory number 12  
25 the question was, "If you deny the descriptions

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of liability claims positions set forth in  
Geico's answers to interrogatory number 6 are  
accurate, state the factual basis for your  
denial." And your response was, "Plaintiff  
states she cannot respond to this interrogatory  
because she did not have knowledge -- she does  
not have knowledge of the descriptions of all  
liability claim positions."

Do you recall that question and  
answer in the interrogatories?

A. Yes.

Q. Did you ever look at Geico's answers  
to interrogatories?

A. Excuse me?

Q. Did you look at Geico's answers to  
interrogatories?

A. I saw it, I don't remember them, no,  
I didn't read them.

Q. When did you see them?

A. I saw them today.

Q. Was that the first time that you saw  
them?

A. I don't recall. I don't think -- I  
know I was e-mailed some stuff, it could have

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2 been in there.

3 Q. Your attorney answered some requests  
4 for productions that we addressed to you. Is it  
5 correct that you have no paperwork from your  
6 employment at Geico in your possession?

7 A. You mean like my -- as far as my  
8 production, no, I don't have anything like that.

9 Q. Let me ask you a different question.  
10 What do you have from your employment at Geico in  
11 your possession?

12 A. I had one letter which I presented at  
13 an unemployment hearing from Geico.

14 Q. Anything else?

15 A. No.

16 MR. HEMMENDINGER: We may be done  
17 here. Let me take a little huddle and figure  
18 that out.

19 THE VIDEOGRAPHER: Going off the  
20 record the time is 6:14 p.m.

21 (Recess taken.)

22 THE VIDEOGRAPHER: Back on the  
23 record the time is 6:24 p.m.

24 BY MR. HEMMENDINGER:

25 Q. The job that you have now you said is



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2 a no-fault job?

3 A. No-fault examiner.

4 Q. No-fault examiner, does that mean  
5 you're handling PIP claims?

6 A. Yes.

7 Q. Who is that with?

8 A. That is with Herford. H E R F O R D.

9 Q. Where is that located?

10 A. Long Island City.

11 Q. I assume it is automobile because it  
12 is PIP?

13 A. Personal lines, yes. Commercial  
14 vehicle, yes.

15 Q. It is only commercial vehicles?

16 A. Yes.

17 Q. So, in the case of commercial  
18 vehicles, the PIP claim comes from the person  
19 that the commercial vehicle struck or from the  
20 driver of the commercial vehicle or both?

21 A. It could come from both.

22 MR. HEMMENDINGER: That's all we  
23 have.

24 MS. RUDICH: I have some questions.

25 EXAMINATION CONDUCTED BY MS. RUDICH:

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2 Q. Good afternoon, Miss Harper. Do you  
3 recall earlier today you testified that by  
4 assigning a pay code, that would determine if a  
5 claim is paid? Do you recall your testimony  
6 regarding that?

7 A. Yes.

8 Q. Would you have to receive the  
9 approval of a supervisor before you could assign  
10 a certain pay code to a claim?

11 A. It wasn't something that would have  
12 to be assigned by -- a supervisor wouldn't give  
13 you an approval for that. But in the training  
14 that you had there were pay codes. If liability  
15 was 100 percent then you would give it a good pay  
16 code. Sometimes claims would come in with  
17 liability already assessed, if it came to you  
18 like that, then you would give it a good pay  
19 code.

20 Q. So the pay code you gave it depended  
21 on liability that was assessed on that claim?

22 A. Yes.

23 Q. And did the CIQ determine the  
24 liability that was assessed on the claim?

25 A. Yes.

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2 Q. So you didn't have any discretion or --  
3 you didn't have any discretion or use independent  
4 judgment as to how much -- which pay code to  
5 assign to a claim, did you?

6 MR. HEMMENDINGER: Objection,  
7 leading.

8 A. It was either a good pay code or a  
9 bad pay code.

10 Q. Based on what was in the CIQ?

11 A. Based on the decision that came out  
12 of claims IQ. Claims IQ was supposed to make the  
13 liability decision.

14 Q. Do you recall earlier today you  
15 testified that you would advise an adverse  
16 carrier about Geico's decision regarding  
17 liability, whether it would be -- whether you  
18 would be disclaiming or whether it could be  
19 accepted? Do you recall your testimony regarding  
20 that?

21 A. Say that again.

22 Q. Do you recall earlier today you  
23 testified that you would advise an adverse  
24 carrier regarding Geico's decision regarding  
25 liability if there was an adverse carrier

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2 involved?

3 A. You mean based on the liability?

4 Q. Yes.

5 A. Like if I -- yes, that was part of  
6 what examiners did. If there was no liability  
7 then we would call -- we would have to call and  
8 tell the adverse carrier that there wasn't.

9 Q. You were essentially a messenger when  
10 you did that, correct?

11 MR. HEMMENDINGER: Objection,  
12 leading.

13 A. Yes, basically.

14 Q. You didn't use any independent  
15 judgment or discretion on that, did you?

16 MR. HEMMENDINGER: Objection,  
17 leading.

18 A. It was based on what CIQ gave us and  
19 what the supervisor -- your supervisor. I mean  
20 there were cases where we couldn't settle files  
21 if it was 100 percent liability, we were told  
22 that we couldn't -- we would have to speak with  
23 the supervisor. You couldn't accept 100  
24 percent. That would be something that where  
25 those kind of claims would have to be discussed.

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2 You couldn't accept 100 percent.

3 Q. Now, Miss Harper, when you worked for  
4 Geico as a I guess it was a Claims Examiner 2?

5 A. Telephone claims.

6 Q. Telephone Claims Representative 2.  
7 Is it your opinion that all telephone claims  
8 representative 2s did the same thing when they  
9 worked?

10 A. Yes.

11 Q. And how do you know this?

12 A. Because they started a centralized --  
13 some centralized school down in, I forget where  
14 it was. I think it was in Washington and we were  
15 told that all the claim examiners are doing the  
16 same thing.

17 Q. The Claims Examiner 2s that were in  
18 your office, were you able to observe what they  
19 did?

20 A. Yes.

21 Q. Did they do the same thing that you  
22 did?

23 A. Yes.

24 Q. Now, you previously testified about  
25 the files that you handled. What were the claims

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2 limits on the files that you handled?

3 A. They were minimal. They were the  
4 minimum limit, it was 25/50.

5 Q. Were these considered small claims or --

6 A. Yes. That is the basic coverage you  
7 have to carry.

8 Q. Would there be a situation where you  
9 would be handling a file and it would get to a  
10 certain limit and it would have to be transferred  
11 from you to a different claim examiner?

12 A. Yes.

13 Q. What was the circumstance when that  
14 would occur?

15 A. Like catastrophic injuries. Those  
16 would have to be transferred. If a demand policy  
17 limit demand would come in and say there was a  
18 policy that was 100/300, that would have to be  
19 transferred and the attorney -- you know the  
20 attorney wants over the \$25,000. That would have  
21 to be transferred. Those kind of cases.

22 Q. Now you testified previously that  
23 when you were employed by Geico as a telephone  
24 claims rep 2 you had two supervisors, correct?

25 A. Yes.

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2 Q. And that one was Carol Vilar?

3 A. Yes.

4 Q. And the other was Marlene Grant  
5 Harris?

6 A. Harris-Grant.

7 Q. Harris-Grant, I'm sorry. Was Marlene  
8 Harris-Grant a hands-on supervisor?

9 MR. HEMMENDINGER: Objection,  
10 leading.

11 A. Marlene was a very -- she was very  
12 hands-on. She knew your claim. She was what you  
13 would consider to be a great supervisor. She was  
14 in the claims. She gave you instructions in the  
15 claims. Yes, she was very hands-on.

16 Q. Would you characterize her as a  
17 micro-manager?

18 MR. HEMMENDINGER: Objection,  
19 leading.

20 A. As far as the claims are concerned,  
21 she was very -- yes.

22 Q. And while you worked for Marlene  
23 Harris-Grant, she supervised you very closely,  
24 right?

25 MR. HEMMENDINGER: Objection.

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2 Leading.

3 A. Yes.

4 Q. Did Miss Harris-Grant tell you how to  
5 negotiate claims?

6 A. We were told, it was called coaching,  
7 how we should go about increments, how we should  
8 go up on our increments, where we should start.  
9 It was coaching that was done.

10 Q. Were you allowed to start at an  
11 amount that was different than what Miss  
12 Harris-Grant told you to start at?

13 MR. HEMMENDINGER: Objection, no  
14 foundation.

15 A. Can you repeat the question again,  
16 I'm sorry?

17 Q. When you say that Miss Harris-Grant  
18 told you the amount to start your negotiating --

19 A. Well, that amount came, really came  
20 from CIQ. We were supposed to start at that --  
21 the low amount that was in CIQ.

22 Q. You couldn't start at an amount lower  
23 than that, could you?

24 A. No, we couldn't.

25 Q. And you couldn't accept an offer or a



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2 demand that was higher than the CIQ amount, could  
3 you?

4 A. No.

5 MR. HEMMENDINGER: Objection.

6 Q. You had to obtain your supervisor's  
7 approval to change the reserve; correct?

8 A. Well, the amount, yes, I would --  
9 yes, definitely.

10 Q. You couldn't change reserves  
11 yourself, could you?

12 MR. HEMMENDINGER: Objection.

13 Q. Could you change reserves on a claim?

14 A. No, I couldn't change -- no, I could  
15 not change the reserves.

16 Q. Mr. Hemmendinger asked you to -- I'm  
17 going to ask you to look at what is marked as  
18 Exhibit No. 6 which is Claim 1185. Can you look  
19 at 150 please. It is the coverage worksheet.

20 A. Yes.

21 Q. Mr. Hemmendinger earlier ask you  
22 questions about the summary of the underwriting  
23 decision.

24 A. Yes.

25 Q. Did you make that decision?

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2 A. No, that is a decision that was from  
3 the underwriting department.

4 Q. And Mr. Hemmendinger asked you  
5 questions about the examiner's recommendation  
6 where it says "disclaim for no spousal coverage  
7 on the policy."

8 A. Yes.

9 Q. Did you decide that on your own?

10 A. No, underwriting basically said there  
11 was no coverage. So there was no coverage.

12 Q. You couldn't change that decision,  
13 could you?

14 A. No.

15 Q. And you basically typed that into  
16 this form based on what underwriting said;  
17 correct?

18 A. Yes.

19 Q. Did you not use any independent --  
20 did you use any independent judgment in deciding  
21 whether or not to disclaim coverage on a policy  
22 because of no spousal coverage or things like  
23 that?

24 A. No.

25 Q. Did you use your own discretion?

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2 A. No.

3 Q. I'm going to ask you to look at what  
4 is marked as Harper Exhibit 7. Claim file 1012.  
5 Look at page 2.

6 A. Yes.

7 Q. Do you see the entry dated Wednesday,  
8 1/28/08 at 6:34 p.m.?

9 A. Yes.

10 Q. What is this entry -- can you just --  
11 can you explain to us in lay terms what this  
12 entry means?

13 A. Well, basically that is an entry by  
14 Miss Harris-Grant and she is giving me  
15 instructions on how to proceed with the claim.

16 Q. What is "I posted defense reserves  
17 555 for each LP," what does that mean?

18 A. That means that she is setting the  
19 reserves. She is putting money in. She is  
20 setting the reserves.

21 Q. And you didn't do that, did you?

22 A. No.

23 Q. Did you have the authority to do  
24 that?

25 A. No. No examiner has the authority to

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2 set the reserves. Well, not in my department, as  
3 far as I know.

4 Q. Now, you testified -- when Carol  
5 Vilar was your supervisor, would she tell you  
6 exactly how to negotiate a claim?

7 A. Carol she -- yes, basically she would  
8 tell you how to -- what your argument should be.  
9 So in that matter, yes, she would.

10 Q. And you would have to listen to her,  
11 correct?

12 MR. HEMMENDINGER: Objection,  
13 leading your own witness.

14 Q. Would you have to -- would you be --  
15 when she told you how to negotiate a claim, you  
16 would -- since she was your supervisor you  
17 listened to her?

18 A. Yes.

19 Q. You didn't use your own independent  
20 discretion and authority, did you?

21 MR. HEMMENDINGER: Objection.

22 A. I mean if -- yes, I mean basically if  
23 she told me how to argue, the arguments, I would  
24 use the arguments that she gave me.

25 MS. RUDICH: No further questions.

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EXAMINATION CONTINUED BY MR. HEMMENDINGER:

Q. Miss Harper, do you understand what the significance of the term independent judgment and discretion is in your claim for overtime?

A. I'm sorry, do I understand?

Q. What that means in connection with your claim for overtime?

A. Somewhat.

Q. What does it mean?

A. That did I have decision-making capabilities. Was I able to use my own judgment.

Q. If the answer to that were no, how would that affect this case?

A. I don't know.

Q. You testified I believe that all TCR 2s did the same thing that you were, to your knowledge?

A. I know, yes, yes, that is to my knowledge.

Q. What is the scope of your knowledge?

MS. RUDICH: Objection.

A. As far as?

Q. Well, are you familiar with the TCR 2 job in Woodbury?

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2 A. Yes.

3 Q. Are you familiar with the TCR job in  
4 Buffalo?

5 A. I believe they did the same thing,  
6 but not as familiar, no.

7 Q. Are you familiar with the TCR job in  
8 Tampa, Florida?

9 A. All I know is that all the examiners  
10 go to the, they call it the centralized school  
11 and that is where they get their training and  
12 they all come from all different parts of the  
13 country. So I'm going to assume that they are  
14 getting -- they are in the same class and getting  
15 the same training that is called centralized  
16 training.

17 Q. Do you know whether TCRs in Florida  
18 or Arizona or Georgia get different training when  
19 they -- in their regions?

20 A. I know that everyone has to go to the  
21 centralized training. That is all I know.

22 Q. So if there were different training  
23 in different regions, you wouldn't know about it?

24 A. Different training for?

25 Q. For a start. Are automobile damage

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2 laws the same in every state?

3 A. No.

4 Q. Do they have the threshold concept in  
5 every state?

6 A. I don't know.

7 Q. Do they have personal injury  
8 protection in every state?

9 A. No.

10 Q. Do they have comparative negligence  
11 in every state?

12 A. No.

13 Q. You testified that your claim  
14 authority were limited to 25/50. I wasn't sure  
15 what those figures refer to. Is that the value  
16 of the policy limit on the insurance policy?

17 A. That is the value on -- I can only  
18 handle a claim payout of 25,000 for one person  
19 and up to 50,000 on the whole entire claim for a  
20 bodily injury claim.

21 Q. And that is the portion of the claim --  
22 so, on a single -- it is 25 on one and 50 on the  
23 entire accident?

24 A. Yes, if there were four people they  
25 would have to split.

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2 Q. If that the were policy limit, one of  
3 the things that would have to be done was the  
4 liability would have to be apportioned among the  
5 different claims -- I guess the liability would  
6 have to apportioned --

7 A. No, just the money.

8 Q. The money would have to be  
9 apportioned among the different claims, correct?

10 A. Yes.

11 Q. And that would be based on the  
12 comparative severity of their claims, their  
13 injuries?

14 A. Yes.

15 Q. Let's assume that we are only talking  
16 about one person, so policy limit is \$25,000?

17 A. Okay.

18 Q. And that policy limit applies to the  
19 portion, to the pain and suffering portion of  
20 that claim, am I correct about that?

21 A. Yes.

22 Q. Now, I gather you received and we  
23 have seen documentation, you went to classes and  
24 there was discussion about how to effectively  
25 negotiate claims, am I correct?



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2 A. I don't remember going to a class on  
3 how to negotiate a claim.

4 Q. I thought we looked at one, it was  
5 listed in your evaluation as a course or seminar  
6 that you attended that you said was very  
7 valuable, do you remember that?

8 A. Yes, I do.

9 Q. So you had training in negotiating?

10 A. Right, but I think that was later. I  
11 think that was like 2009. I mean if you're  
12 talking about like when I first started, there  
13 was really no real training on that. But they  
14 had people who came in and we had to go to these  
15 classes and courses, yes.

16 Q. One of the things that they trained  
17 you was don't spend all your money at once, so  
18 negotiate in increments, am I correct?

19 A. We were told that we should negotiate  
20 in increments, yes.

21 Q. But the number, the amount of those  
22 increments you had to decide on the fly when  
23 you're talking to the attorney, didn't you?

24 MS. RUDICH: Objection. You can  
25 answer.

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2 A. I was told -- Miss Harris-Grant had a  
3 discussion with a group of us that we should  
4 negotiate -- they were basically telling us and  
5 this wasn't just her, but there was other  
6 supervisors also who were saying instead of going  
7 up a thousand, you should go up \$100. Or go up  
8 odd amounts. That is what they wanted to see on  
9 the files.

10 Q. And at the same time they also talked  
11 to you when you're talking to them you should be  
12 making arguments about why they should accept  
13 your offer?

14 A. They would give you arguments.

15 Q. And you had to figure out how to  
16 deploy those arguments?

17 A. You would use arguments that were  
18 there.

19 Q. You didn't just blurt them out all at  
20 once, you had to choose when to make them or not  
21 make them?

22 A. I remember one case with Carol Vilar  
23 that that was her whole thing. You don't give  
24 all the arguments at once, you give them one at a  
25 time.

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Q. When it seems sensible to do that to you, right?

A. Well, I mean you would just -- yes, I guess so. You would try to give the arguments and try to use all the arguments that were given.

Q. It's an exercise in persuasion, am I correct?

MS. RUDICH: Objection.

A. In persuasion? I really basically look at the facts, what the doctors said and that is the arguments that I would use. So I had the money on the file.

MR. HEMMENDINGER: I don't have anything else.

MS. RUDICH: I'm done.

(CONTINUED ON NEXT PAGE.)

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CANDACE HARPER

THE VIDEOGRAPHER: This marks the  
end of the deposition of Miss Candace Harper.  
Total number of tapes used today is three and we  
are going off the record, the time is 6:48 p.m.

(TIME NOTED: 6:48 P.M.)

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CANDACE HARPER

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Notary Public

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STATE OF NEW YORK ) Pg\_\_of\_\_Pgs

ss:

COUNTY OF NEW YORK )

I wish to make the following changes, for  
the following reasons:

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, WILLIAM VISCONTI, a Shorthand  
Reporter and Notary Public within and for the  
State of New York, do hereby certify:

That CANDACE HARPER, the witness  
whose deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition is a  
true record of the testimony given by the  
witness.

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
WILLIAM VISCONTI

CANDACE HARPER

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